91-1616

No. _____

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

ROBERT O. POTTER,

Petitioner,

vs.

STATE OF CALIFORNIA,

Appellee and
Respondent.

PETITION FOR WRIT OF CERTIORARI

ROBERT O. POTTER
25791 Terra Bella
Laguna Hills, California 92653
(714) 582-5444

IN PROPRIA PERSONA

ISSUES PRESENTED FOR REVIEW

A. CONSENT TO SEARCH

Under threat to obtain a search warrant for a Constitutionally protected area, was consent to search deemed voluntary when police lacked the probable cause requirement to obtain said warrant? Was there an improper assertion of authority?

B. EXPLORATORY SEARCH

Did the search of business offices, under a search warrant for seventy-six documents by a police officer, constitute a "general exploratory search" in violation of the Fourth Amendment when he did not have a copy of the search warrant in his possession to guide him in determining which items could be legally seized?

C. INEVITABLE DISCOVERY

Does the doctrine of "inevitable discovery" remedy violations of Constitutional

Law? Is it inconsistent with the purposes of the exclusionary rule?

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STATEMENT OF THE CASE

Petitioner was charged, by information, with one count of Conspiracy to Commit Grand Theft and two counts of Grand Theft. He pleaded not guilty.

There were three Pre-trial Motions: to suppress evidence, to set aside the information, and to disqualify DEA Meyers from prosecuting the case. Jury selection commenced on April 20, 1989 and continued for five days.

Evidence was presented from May 9, 1989 to July 12, 1989.

Petitioner was convicted on all counts as charged.

Petitioner tendered one million dollars as restitution and the court accepted the money. Petitioner was sentenced to upper term of three years on Count One plus two years for excessive taking. Sentence was stayed on Counts Two and Three. The sentence was suspended for five years and Petitioner was placed on probation with the condition that he serve one year in the County Jail. That condition has been fulfilled.

Petitioner timely filed a Notice of Appeal. On July 22, 1991, the Court of Appeal, Second Appellate District, Division Four, affirmed the conviction.

Petitioner timely filed a Petition for Review with the Supreme Court of

California. On October 23, 1991, the petition was denied.

Petitioner's attorney failed to notify Petitioner of the denial of the petition until November 26, 1991.

Petitioner sought, by application, an extension of time within which to file a Petition for Writ of Certiorari to the United States Supreme Court. On January 2, 1992, Justice Sandra D. O'Connor signed an Order Extending Time to and including February 20, 1992.

JUDGMENTS OF STATE COURT TO BE REVIEWED AND STAGES OF PROCEEDINGS IN WHICH FEDERAL QUESTIONS WERE RAISED

Both Petitioner and Co-Defendant Mr. Hughes' counsel alluded to violations of both Defendants' Constitutional Rights in their Pre-trial Notices of Motion to Suppress Evidence (APP. F & G) (Petitioner's

counsel, Mr. Follin, on page two of his Motion, and Mr. Hughes' counsel, Mr. Gibson, on pages 4, 9, 10, 13 (U.S. v. Schleis (1978) 582 F.2d 1166) and on page 16).

Petitioner's trial counsel, Mr. Michael Carty, raised Constitutional questions in his Pre-trial Motion to Suppress and Return Evidence in the Superior Court on Pages 2, 13, 14, 19, 20, 22-26. (APP. G)

Petitioner's counsel, Mr. Michael Carty, in his Appeal, after conviction, raised the same Constitutional objections as he did in the Pre-trial Motion To Suppress Evidence. (See "Notice of Appeal" APP. K.)

The Appellate Court rejected Petitioner's Fourth Amendment argument (Page 2 of Decision - APP. L).

The Supreme Court of California denied review. (APP. M)

Decision on pre-trial Motion To Suppress evidence (APP. I.)

Judgement of trial court on Motion to Suppress (APP. H)

JURISDICTION

Petitioner's request for a hearing on the issues to the Supreme Court of California was denied on October 23, 1991.

An Application for an Extension of Time within which to file a Petition for a Writ of Certiorari was granted by Justice Sandra D. O'Connor to and including the 20th day of February, 1992.

UNITED STATES CONSTITUTIONAL PROVISIONS

Violation of the protections and guarantees of the Fourth Amendment to the Constitution of the United States.

Violation of the protections and guarantees of the Fourteenth Amendment to the Constitution of the United States.

State Court deciding Federal issues in direct conflict with applicable decisions of the Supreme Court of the United States.

Petitioner requests this Court to review the findings and decisions on violations of U.S. Constitutional Law by both the Municipal Court and Superior Court of the County of Ventura, California. Also, the Court of Appeal, 2nd Appellate District.

Petitioner's position is that the Honorable Albert T. Blanford's rulings during a Pre-trial Suppression of Evidence Motion Hearing was in direct conflict with applicable decisions of this Court. Violation of the Fourth and Fourteenth Amendments were raised by Petitioner's counsel both in the Pre-trial Hearing and in the Trial Court of the Honorable Kenneth R. Yegan.

Further, Petitioner requests this Court to decide the applicability of the "inevitable discovery" doctrine to Constitutional Law by providing guidelines for

lower courts. Several Federal Courts of Appeal have rendered decisions that are in conflict with other Appellate Courts.

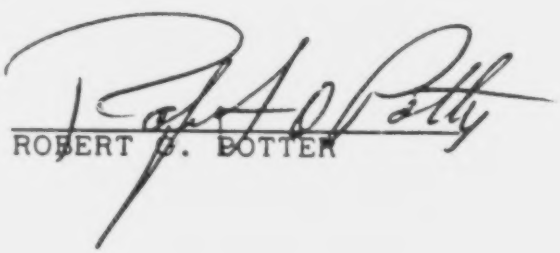
VERIFICATION

STATE OF CALIFORNIA)
)
COUNTY OF ORANGE)

I AM THE PETITIONER IN THIS PETITION. I KNOW THE FACTS ALLEGED IN THE PETITION TO BE TRUE, AND THE EXHIBITS IN THE ACCOMPANYING APPENDIX TO BE TRUE COPIES OF THE DOCUMENTS THEY REPRESENT.

I DECLARE UNDER THE PENALTY OF PERJURY, UNDER THE LAWS OF THE STATE OF CALIFORNIA AND UNITED STATES OF AMERICA, THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AT ORANGE COUNTY, CALIFORNIA ON FEBRUARY 12, 1992.



ROBERT G. POTTER

STATEMENT OF FACTS

On July 26, 1985, Ventura County District Attorney investigator Vinson J. Gilliam obtained a warrant to search Petitioner's business offices located at 23201 Mill Creek Road, Third Floor, Laguna Hills, California 92653. The warrant authorized the seizure of three mortgage loan files and related documentation as well as cancelled business checks. (Search Warrant - APP. B)[1/]

The search team was comprised of Ventura County Deputy District Attorney Robert Meyers, five Ventura County District Attorney Investigators, one Administrative Aide and six Orange County Deputy Sheriffs, who had volunteered to assist the search

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[1/] "APP" refers to Appendix filed concurrently herewith.

team (RT 132-133).[2/] When Petitioner's General Manager, Mr. Steven Walters, arrived for work at 9:00 a.m. on July 31, 1985, he saw officers in the parking lot and went upstairs to his office (RT 119-120). Orange County Deputy Sheriff Sgt. Thomas Garner placed three deputies downstairs and two upstairs on the third floor to secure the building (RT 73). A few minutes after Mr. Walters had arrived, Gilliam and DDA Meyers, accompanied by at least six investigators or officers, advised the third floor receptionist that they were there to execute a search warrant (RT 134, 207). They asked if Petitioner or his partner, Mr. Steven Hughes, were on the premises, and when the receptionist

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[2/] All record references refer to the reporter's transcript of the Preliminary Hearing and Hearing on Motion to Suppress held in Ventura County California Municipal Court on June 1, 1987, Honorable Altert T. Blanford, Judge.

answered no, requested the manager (RT 134-135). Mr. Walters was paged to the front desk and Gilliam explained their purpose to him (RT 120, 135). Mr. Walters indicated that he would cooperate and asked the officers to step into his office (RT 120, 135).

Mr. Hughes arrived at 9:30 a.m. and was greeted by uniformed officers as he stepped off of the elevator on the third floor. The officer held him by his arm and escorted him to Mr. Gilliam (RT 297). Mr. Hughes observed officers searching people at the elevator and at the staircase as they entered and exited the third floor (RT 300).[3/] The Orange County Deputies also searched people for documents as they

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[3/] Orange County Deputy Sheriff Carner acknowledged that he and Ventura County DA Investigator Joe Pulido were responsible for insuring that no one left the premises with documents described in the warrant (RT 134).

arrived on the third floor (RT 73-74). Mr. Walters also testified that officers turned people away who were trying to get into the office (RT 122). Mr. Hughes testified that officers even searched people going in and out of the restrooms (RT 311).

Investigator Gilliam advised Mr. Hughes of their purpose and told him that if he assisted them, it would not be necessary for the officers to search the entire third floor (RT 136-137).[4/] Also, while Mr. Hughes accompanied the officers to an off-site storage facility to search for the documents listed in the warrant, Investigator Gilliam instructed the

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[4/] Investigator Gilliam testified that their "efforts" were to give Mr. Hughes an opportunity to assist them to "avoid" a detailed search of the premises (RT 212). However, he admitted that, even while Mr. Hughes was looking for the documents, the officers "may have been" searching the rest of the premises (RT 212).

officers remaining at the offices on Mill Creek Road to continue to search the third floor for the items listed in the warrant (RT 163). They were to leave the documents in position and point them out to Gilliam when he returned so that he could be the "seizing officer" (RT 163-164).

Gilliam told Hughes that a copy of the seach warrant had been given to Mr. Walters. He believed Mr. Walters gave a copy to Mr. Hughes. Gilliam told Hughes that the warrant pertained to three loan files in which "Firouzan" was the borrower (RT 208). Gilliam acknowledged that he wanted Hughes' cooperation and when Mr. Hughes said he would cooperate and "hadn't done anything wrong," Gilliam didn't correct him (RT 381-382). Hughes believed that the search team was only interested in three loan files in which Mr. Firouzan was the buyer of the property and that he

was not involved. He didn't ask anyone whether he was a suspect and no one ever told him that he was (RT 317-318). DDA Meyers told him that he was not the target of their search and that they were only interested in investigating and securing evidence against Mr. Firouzan (RT 309). Investigator Gilliam did not provide anyone at the office with a copy of the search warrant affidavit (RT 382).[5/]

Orange County Deputy Sheriff Thomas Garner admitted that he assisted in searching Petitioner's offices and that he did not have a copy of the search warrant in his possession (RT 90). He indicated that when he found something he thought was listed in the warrant, he would point it

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5/ The search warrant affidavit leaves no doubt that the Petitioner and his partner, Mr. Hughes, were the targets of the investigation. They and their companies are specifically named therein. (Warrant Affidavit P. 45) (APP. A)

out to an unidentified Ventura County officer who would then check if the item was listed in the warrant (RT 90). Deputy Garner testified that he was looking for things with the names of Potter, Hughes or Firouzan on them (RT 91). He has no personal knowledge whether the Ventura Officer actually checked the search warrant for the items he had disconvered (RT 91).

During inspection of several file cabinets, Mr. Hughes and Investigator Gilliam were unable to locate any of the files authorized to be seized. Mr. Hughes mentioned that loan files were only kept at the office for a period of six months and that the files they were seeking were quite possibly located at their mini-storage facility (RT 138, 209). Mr. Hughes testified that while Investigator Gilliam was searching Petitioner's office for cancelled checks DDA Meyers told him that he was

seeking 100% cooperation from Mr. Hughes, and that if he didn't cooperate they could make his life miserable for the next twenty-four hours (RT 303, 309, 330). (Declaration of Steven William Hughes - APP. E)

Investigator Gilliam told Mr. Hughes that he and members of the search team would like to accompany him to the mini-storage unit to look for documents not found at the Mill Creek Road office. He further indicated that their search warrant only pertained to the location on Mill Creek Road (RT 139). Gilliam told Hughes that based on Hughes' statement and his belief that the files were in a different location, he could request a judge to issue another search warrant and that the judge may or may not issue the warrant, or with Hughes' cooperation and willingness he could voluntarily consent to allow the

search team to go to the storage unit location (RT 139).

Mr. Walters was present when DDA Meyers told Hughes he wanted him to cooperate 100% and that if he didn't cooperate, the search team would take its time to search throughout the complete office while basically keeping the office closed. Mr. Walters felt that if that was the method of search, it would definitely disrupt the business (RT 128, 130). Also, it would have a tremendous effect on the reputation of the business (RT 131). Hughes said that the search was disrupting business and he just wanted to get them out as fast as possible.

Investigator Gilliam told Mr. Hughes that by allowing members of the search team to accompany him to the storage unit, Gilliam was giving up his right to seek a second warrant (RT 142). Gilliam never told

Hughes that he and Petitioner were suspects in connection with a criminal investigation or the focus of their investigation (RT 161). After Hughes had been assured by DDA Meyers that the investigation didn't involve him or the company (RT 329), he agreed to take members of the search team to the storage unit (RT 304).

THE SEARCH OF THE STORAGE FACILITY

As they left to go to the storage facility, several members of the search team were instructed by Gilliam to stay behind and continue searching (RT 163). Mr. Hughes removed his keys from his pocket and proceeded to walk toward his car (RT 305). Investigator Gilliam said that he would "much rather" have Mr. Hughes ride with them (RT 305). Mr. Hughes felt that he had no choice. He was told to sit in

the back seat of Investigator Gilliam's car (RT 306). Once in Gilliam's car, the topic of conversation involved directions of how to get to the public storage facility (RT 222). Upon arrival at the public storage unit (22292 El Pacifico, Laguna Hills, California), approximately one-quarter mile from the Mill Creek office, Mr. Hughes told the investigators that the storage boxes were labeled alphabetically by year (RT 306-307). He did not give them permission to take or look at any files that were not covered by the search warrant (RT 307). The first file taken from a storage box was labeled with Firouzan's name (RT 150). The loan file was for a property located on Cochran Street in Simi Valley, California, and was not one of the loan files authorized to be seized by the search warrant. Gilliam examined the contents and was of the opinion that this

loan could be another "strawbuyer" type of loan involving Firouzan. However, he felt if it was a legitimate loan it might contain some legitimate financial information on Mr. Firouzan (RT 150-151). He informed Mr. Hughes that he was seizing the file (RT 154).

Gilliam testified that the "Cochran" loan file was not listed in the search, nor did it deal with any of the properties listed in the warrant (RT 149). He had no information that the transaction was questionable or that it was related to any of the three other transactions (RT 265-267). Nevertheless, he seized the file because he thought it contained information concerning Firouzan (RT 154). The search team looked at anything they wanted to without asking Mr. Hughes' permission. Hughes felt that he didn't have a right to tell them no (RT 308). Mr. Hughes retrieved

two loan files that he wanted to take back to his office. The two files pertained to "Jordan Avenue" properties. Investigator Gilliam looked through the two files and made notations without obtaining Mr. Hughes' permission.[6/] Two of the four loan files authorized to be seized by the warrant were found in the mini-storage unit.

Gilliam, Hughes and other members of the search team returned to the Mill Creek offices where Gilliam was advised, by an unknown officer, that the "Mulholland" loan file, listed in the warrant had been found in Petitioner's office (RT 164, 237).

Another unknown officer called Gilliam's attention to a file labeled "My House (Bob)" as something he "would be interested in" (RT 166, 270). That file

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[6/] Both the "Cochran" and "Jordan" properties were the subject of Count One of the Criminal Complaint. They were listed as overt acts in the conspiracy charge.

pertained to the "Terra Bella" property.[7/] Gilliam seized the file, even though it was not listed in the search warrant, because the property had been transferred to a "Tisa Riley," a business associate of Firouzan (RT 166).[8/] Prior to the day of the search, none of the investigators had attempted to contact Ms. Riley (RT 243). Before the officers had found the file "My House (Bob)", they had no information that Ms. Riley was in any way related to the "Terra Bella" property (RT 245). The day following the search, Investigator Gilliam reviewed seized documents with Ms. Riley at her residence to refresh her

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[7/] The "Terra Bella" transaction is the subject of Count One of the Criminal Complaint and was listed as Overt Act No. Two.

[8/] There was no mention of "Tisa Riley" on the folder itself (RT 239). However, the officer told Gilliam that he had opened the file and noted that it pertained to Petitioner and Ms. Riley (RT 239).

recollection of the events (RT 184, 190, 274-275).

Petitioner returned from vacation two days after the search of his offices and was assured by Mr. Hughes that they had no problems with the DA's office, that the DA was after Firouzan (RT 356). Petitioner discovered the last file listed in the search warrant ("Deepwood") laying on top of a Loan Officer's desk (Mr. Mark Knapp). Petitioner called his civil attorney, Mr. J. Thomas Bowne, who also advised Petitioner that DDA Meyers had represented to him that neither Petitioner, Mr. Hughes nor their business entities were the focus of their investigation, that they were looking for three or four loan files involving Mr. Firouzan and Alan Glass (RT 356-357, 360-362). Mr. Hughes, again, corroborated what Attorney Bowne had told Petitioner. Based upon these statements,

Petitioner authorized the realease of the "Deepwood" file to DDA Meyers (RT 358-359). Petitioner also instructed Attorney Bowne to relate to DDA Meyers, "in the strongest terms," to return every item seized that was not listed in the search warrant (RT 363).

A. CONSENT TO SEARCH

UNDER THREAT TO OBTAIN A SEARCH WARRANT FOR A CONSTITUTIONALLY PROTECTED AREA, IS CONSENT TO SEARCH DEEMED TO BE VOLUNTARY IF POLICE LACK THE PROBABLE CAUSE REQUIREMENT TO OBTAIN SAID WARRANT? IS THERE AN IMPROPER ASSERTION OF AUTHORITY?

During the search of the offices, authorized to be searched by the warrant, Investigator Gilliam learned from both Mr. Hughes and Mr. Walters that loan files were only kept at the location for six months and then they were transferred to an off-site storage facility. Investigator

Gilliam told Hughes that based upon Hughes' statement regarding the storage facility he could request a judge to issue another search warrant and that the judge may or may not issue the warrant, or with Hughes' cooperation and willingness Hughes could voluntarily consent to allow the search team to go to the storage unit. Investigator Gilliam didn't know the location of the storage unit.[9/]

Gilliam's own testimony indicates that he could not fulfill one of the mandatory requirements of the Fourth Amendment ... "particularly describing the place to be searched...". Gilliam had never before

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[9/] Investigator Gilliam's testimony in Pretrial Suppression Motion Hearing: Question: "Was there any conversation between Mr. Hughes and anyone else in the vehicle from the time he left the office to the cars parked at the storage area?" Gilliam: "I believe the topic of conversation involved directions of how to get to the public storage facility." (RT 222)

been to the storage unit and did not know its location; therefore, his statement to Hughes regarding the obtaining of a second search warrant for the storage unit is an expression of unlawful assertion of authority and was made with coercive intent to obtain Mr. Hughes' consent to take him to the storage facility. It was impossible for Investigator Gilliam to meet the burden of proving that Mr. Hughes' consent was given voluntarily, without duress or coercion, given all of the facts.10/

10/ "A party alleging ineffective consent on this ground must show affirmative acts by the agent that materially misrepresent the nature of the inquiry, and the showing must be by clear and convincing evidence." "The Fourth Amendment requires that warrants 'particularly describe the place to be searched' ...This requirement is aimed at preventing 'general, exploratory rummaging in a person's belongings." UNITED STATES v. WUAGNEUX (1982) 683 F.2d 1347-1348. "For, no matter how subtly the coercion was applied, the resulting 'consent' would be no more than a pretext for the unjustified police intrusion against which

(cont. p. 27)

Another point to consider in determining if consent was given free and voluntarily is whether it meets the standards for voluntary consents as outlined by the "totality of all the circumstances" test in SCHNECKLOTH v. BUSTAMONTE, which states "whether a consent to search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." In U.S. v. CHEMALY (1984) 741 F.1d 1352 (11th

10/ (cont.)

the Fourth Amendment is directed." SCHNECKLOTH v. BUSTAMONTE (1973) 412 U.S. 218, 227.

"The warrant clause of the Fourth Amendment protects commercial buildings as well as private homes." MARSHALL v. BARLOW'S, INC. (1978) 436 U.S. 307. "The businessman, like the occupant of a residence, has a constitutional right to go about his business, free from unreasonable official entries upon his private commercial property." SEE V. CITY OF SEATTLE (1967) 387 U.S. 541, 544.

Cir.), the court gave a list of relevant factors in determining voluntariness: "The presence of coercive police procedure, the extent and level of the defendant's cooperation with police, the defendant's awareness of his right to refuse to consent to the search, the defendant's education and intelligence, and significantly, the defendant's belief that no incriminating evidence will be found."

We have only to look at the facts surrounding the search to see that almost all of the factors, outlined by the court in the "CHEMALY" case were present in the instant case.

The officers had no legal right to disrupt Petitioner's business to the extent that they did in order to serve the warrant. The seach warrant affidavit (APP. A) reveals that the officer knew that the transactions with which they were concerned

had been completed for several years. Therefore, the searching of people both entering and exiting the offices was coercive, by nature, and against the legal principal of YBARRA v. ILLINOIS (1979) 444 U.S. 91.[11/] Most certainly, the searching of people going in and out of the restrooms, which were not part of the offices, was intrusive and an improper assertion of policy authority.

There was no cause for the officers to threaten to stay on the premises for twenty-four hours and to keep the offices and building secured. They had an obligation to search for those items listed in

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11/ "It is true that the police possessed a warrant based on probable cause to search the tavern...but a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person...the Fourth and Fourteenth Amendments protect the 'legitimate expectations of privacy of persons, not places'."

the warrant in a reasonable and efficacious manner and, if they did not find them, to leave.

The officers also told Hughes that neither he nor the Petitioner were the targets of their investigation and when Hughes indicated cooperation by saying, "I haven't done anything wrong," the officers did not correct him. When applying the "totality of all the circumstances" test to the facts, consent to the search of the off-site storage unit was not given freely and voluntarily. Accordingly, the files located in the storage facility should have been suppressed.

B. EXPLORATORY SEARCH

DID THE SEARCH FOR SEVENTY-SIX BUSINESS DOCUMENTS, UNDER A SEARCH WARRANT, BY A POLICE OFFICER CONSTITUTE A "GENERAL EXPLORATORY SEARCH" IN VIOLATION OF THE PROTECTIONS AND GUARANTEES OF THE FOURTH AMENDMENT WHEN THE OFFICER DID NOT HAVE A COPY OF THE WARRANT IN HIS POSSESSION TO GUIDE HIM IN DETERMINING WHAT DOCUMENTS WERE AUTHORIZED TO BE SEIZED?

Orange County Deputy Sheriff Thomas Garner, along with other members of the Orange County Sheriffs' Department were assisting the search team from Ventura County execute a search warrant on July 26, 1985 at Petitioner's business offices located on the third floor at 23201 Mill Creek Road, Laguna Hills, Orange County, California. The evening prior to the search, Deputy Garner attended a meeting in Orange County given by members of the Ventura County search team. He understood

that the focus of the search was the corporation (Petitioner's business entity) (RT 85-86). He only assumed that Petitioner and Mr. Hughes (Petitioner's partner) were also being investigated since they owned the company (RT 86. Sgt. Barner acknowledges being told in the meeting to look for items listed in the search warrant and looked at a copy of the warrant (RT 89-90). While he was engaged in the search, he did not have a copy of the search warrant in his possession (RT 90).[12/]

Sgt. Garner testified that while he searched he had a Ventura officer with him and would show him things he found that

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12/ Question: "While you were at the location where the search warrant was being served, did you have a copy of the search warrant or the list of items?" Garner: "Copy was there, I believe. I'm not--I didn't have a copy personally."

"appeared" to be pertinent (RT 91).[13/]

The search warrant listed seventy-six items that were authorized to be seized. Without a warrant or list of the items contained in the search warrant, how could Sgt. Garner be conducting anything other than a "general exploratory" search? He wasn't even a primary member of the search team and had only, by his own testimony (RT 89-90), viewed the search warrant for the first time the evening prior to the search. He readily admitted searching for

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13/ Question: "How did you--What guideline were you using to decide that something might be pertinent?" Garner: "Things that had the principals' names on it." Question: "And what names were those?" Garner: "Hughes and Potter, the other name you mentioned here." Question: When you would show something to this person from Ventura, would that person check with the--Would that person check with the search warrant and determine whether that file was something to be seized or not?" Garner: "I don't have personal knowledge that he checked the search warrant, but it was my understanding that's what they did." (RT 91)

documents that bore the names "Hughes, Potter and Knapp." The search warrant did not authorize seizure of any document baring those names (Search Warrant).

A warrant may not authorize a "general, exploratory rummaging in a person's belongings." ROBERTS v. U.S. (S.D.N.Y. 1987) 656 F.Supp. 929, 935. Nor may a warrant, sufficiently specific on its face, be utilized as a pretext to conduct an exploratory rummaging; the officers must "confine their search to the authorization given by the magistrate." UNITED STATES v. RETTIG (S.D.N.Y. 1978) 589 F.2d 418, 423. "A warrant must particularly describe the items to be seized and does not leave anything to the discretion of the executing officer." MARRON V. UNITED STATES (1927) 275 U.S. 192, 196.

In U.S. v. MEDLIN (1988) 842 F.2d 1194 (10th Cir.), the court held that when

there is a "flagrant disregard" for the terms of the search warrant the court may invoke a blanket exclusion of all evidence, that which is described in the warrant as well as that which exceeded the warrant's scope.

Sgt. Garner's own testimony clearly demonstrates that he was engaged in a "general exploratory search" in violation of the protections of the Fourth Amendment. He exhibited a flagrant disregard for the terms of the search warrant and was confused as to what was or was not authorized to be seized. Never once did he personally look at a copy of the warrant on the day of the search, even though he was an active participant in the search for documents.

Upon Investigator Gilliam's return from the storage unit to the offices located on Mill Creek Road, an unknown member of the search team had retrieved a loan

file from Petitioner's desk and handed it to Investigator Gilliam advising him that he should look at the file as it pertained to the Petitioner and a "Tisa Riley" (RT 238-239). Gilliam admits that there were no other markings on the outside of the file other than "My House (Bob)." The search warrant did not authorize the seizure of any documents that bore the name of Petitioner or Tisa Riley. Gilliam's testimony was that the officer locating the file had gone through it and told him that he should review it (RT 239). He did review the contents of the file but found nothing in it that was authorized to be seized by the warrant (RT 239). He was told, by one of the searching officers, that the filed marked "My House (Bob)" pertained to Petitioner's personal residence (RT 240); however, he seized the file. Investigators directed Gilliam toward

other documents, most of which included documents from Petitioner's corporate attorney to Petitioner regarding various civil litigations involving Petitioner's business. Gilliam admits reviewing the documents, but denies making any notes (RT 241). GOULED v. U.S. 225 U.S. 298, "Search warrants may not be used as a means of gaining access to a man's... office and papers solely for purposes of making a search to secure evidence to be used against him in a criminal proceeding." Nor may a warrant, sufficiently specific on its face, be utilized as a pretext to conduct an exploratory rummaging; the officers must "confine their search to the authorization given by the magistrate." UNITED STATES v. RETTIG (S.D.N.Y. 1978) 589 F.2d 418, 423. "The 'plain view' doctrine may not be used to extend a general exploratory search from one object

to another until seomething incriminating, at last, emerges." COOLIDGE v. NEW HAMPSHIRE (1971) 403 U.S. 465. "A search must be limited to the terms of the warrant." BIVENS v. SIX UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF NARCOTICS 403 U.S. 388.

The above legal dictates also apply to Gilliam's seizure of the "Cochran" file from the storage unit. Even if the court concludes that Mr. Hughes' consent to search the storage unit was voluntarily given, it was limited to searching only for items listed in the warrant. When Gilliam discovered the "Cochran" file, he examined it and could not conclude that it was either legitimate or fraudulent (RT 150). Gilliam's own testimony shows that he failed to meet the "immediately apparent" criteria for seizures under the "plain view" doctrine as indicated by the

Supreme Court of the United States in TEXAS v. BROWN, 460 U.S. 730, 736-737.

Both the "My House (Bob)" and "Cochran" files should have been suppressed as having been seized in violation of Petitioner's Fourth and Fourteenth Amendment rights against unlawful search and seizure.

GILLIAM'S BAD FAITH CONDUCT
RE: SEARCH WARRANT

Investigator Gilliam was the affiant in the affidavit in support of the search warrant (APP. A). He swore, under oath, that on May 6, 1985, he observed and photographed the office building which housed Petitioner's offices. He indicated that he entered the building and took the elevator to the third floor where he described Petitioner's reception area. (Page 44 Of Affidavit in Support of the Search Warrant). However, during his pretrial testimony on

a Motion to Suppress Evidence, he stated that prior to the day of the search on July 31, 1985, he had never been to the third floor offices of Petitioner (RT 380-381).[14/]

Gilliam either intentionally deceived the magistrate issuing the search warrant, or exhibited a reckless disregard for the accuracy of the affidavit. Thereby, undermining the judicial process and depriving Petitioner of due process of law as guaranteed by the Fifth Amendment to the United States Constitution.

In the "Return to Search Warrant" (APP. C) Investigator Gilliam, again, shows a reckless disregard for the truth by swearing, in front of the issuing

---

[14/] Question: "Before July 31, of 1985, when you went to the Mill Creek Road premises to serve that search warrant, had you ever been on the third floor of that building? Had you ever been in the office up there?" Gilliam: "No."

magistrate, that all of the documents seized were taken from the premises authorized to be searched by the warrant. He failed to include in his sworn testimony that two loan files listed in the warrant, and one that was not ("Cochran"), were seized at an off-site storage facility. Investigator Gilliam's untruthful sworn statements make the entire affidavit suspect.

C. INEVITABLE DISCOVERY DOCTRINE

DOES THE DOCTRINE OF "INEVITABLE DISCOVERY" REMEDY VIOLATIONS OF CONSTITUTIONAL LAW? IS IT INCONSISTENT WITH THE PRIMARY PURPOSES OF THE "EXCLUSIONARY RULE"?

Investigator Gilliam seized the loan file identified as the "Cochran" loan while conducting a search at a self-storage unit which was at a different location than the location authorized to be searched. He alleged that Petitioner's partner, Mr.

Steven Hughes, gave his "consent" to search the unit for items listed in the search warrant.

The "Cochran" file was not one of the files authorized to be seized by the terms of the search warrant. When he reviewed the contents of the "Cochran" file he thought that possibly it was a legitimate loan (RT 267). He didn't know if the file contained any false information (RT 266).

The same is true for the file listed "My House (Bob)," which was seized at the Mill Creek offices and found in Petitioner's office desk. This file also was not listed in the search warrant as one of the files to be seized. "Use of the inevitable discovery doctrine subverts the purpose of the exclusionary rule when intruding officers knowingly violate dictates of the Fourth Amendment." U.S. v. GRIFFIN (1974)

502 F.2d 961 (6th Cir.).

The day after the search, Investigator Gilliam stayed in Orange County and took the seized documents to the home of Tisa Riley (her name was on documents inside of the file labeled "My House (Bob)," and she was known to Gilliam as being a girlfriend of Mr. Firouzan, who was the original suspect but who was granted conditional immunity and not prosecuted). Gilliam used the documents to remind Ms. Riley of the two transactions (RT 184, 190, 274-275). She had a great deal of trouble remembering the two transactions due to a drug and alcohol problem during the time period that both the "Cochran" and "Terra Bella" ("My House (Bob)" loan file) transactions were concluded (RT 246). Therefore, it is more than probable that, without those tainted documents, Ms. Riley would not have been able to remember the

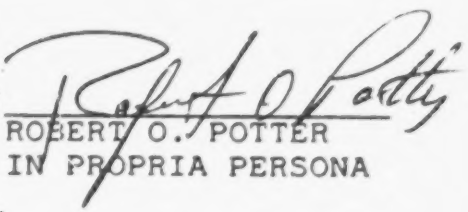
two transactions in which she was involved. At first, she denied any knowledge of the "Terra Bella" property transaction (RT 286-287). In addition, Investigator Gilliam had known about Ms. Riley since 1984, but didn't contact her until after he had observed her name in the "Terra Bella" file. Gilliam testified that he had no intention of checking the Orange County records for loans to Tisa Riley prior to speaking with her the day after the search (RT 278). In U.S. v. FINUCAN 708 F.2d 838, the court refused to apply the inevitable discovery doctrine because it was not "certain that evidence would have been lawfully obtained had it not been for the illegal search." "In the end, questions concerning the advisability of the inevitable discovery exceptions rest upon more fundamental questions about the desirability of the exclusionary rule. Assuming the

need for this remedy for Fourth Amendment violations, it is hard to dispute that the inevitable discovery exception is inconsistent with the exclusionary rule's purposes." (LaFave, Search and Seizure)

WHEREFORE, PETITIONER PRAYS THAT:

THE COURT GRANT RELIEF THAT IS APPROPRIATE UNDER THE CIRCUMSTANCES.

ROBERT O. POTTER

By: 
ROBERT O. POTTER
IN PROPRIA PERSONA

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APPENDIX A

SUPERIOR COURT
COUNTY OF VENTURA
STATE OF CALIFORNIA

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT) COURT NO._____

I, Vinson J. Gilliam, being first duly sworn, state that there is now on the premises described as the third-floor office space occupied by Nationwide Home Loans, Inc., Pacific Financial Group, Inc., and Saddleback Valley Escrow, Inc., in the office building located at 23201 Mill Creek Roda, Laguna Hills, California, a large, three-story building with morrored siding, large white letters at the top which read "Pacific Financial Group" and a sign on the front side of the property which reads "Hansch Financial, 23201;" the following property which is: [property used to commit a felony] and [property tending to show a felony was committed, or a particular

person committed it];

1. Nationwide Home Loans loan file, No. 83-339MK, pertaining to the real estate sales transaction involving borrower Rostam Firouzan and the property at 1016 Deepwood, Westlake Village, California, which closed escrow on August 1, 1983.

....

On May 6, 1985, your affiant observed and photographed the office building located at 23201 Mill Creek Road, Laguna Hills, C. Attached to and incorporated in the corresponding serach warrant as Exhibit "A" are two (2) photographs of this office building. Copies of the above-described photographs are attached hereto and incorporated herein by reference as Exhibit No. 18. The office building is a large, three-story building with the name "Pacific Financial Group" displayed in large white letters at the top of the building. A review of the

business directory located in the lobby of the office building revealed that Nationwide Home Loans and Pacific Financial Group were both located in Office No. 300. All the other businesses listed in the directory reflected an office number in the 100 or 200 series. A separate sign between the two elevator doors in the lobby indicated that Pacific Financial Group and Nationwide Home Loans were located on the third floor. Your affiant took the elevator to the third floor and observed a small reception area and a female receeptionist seated at a desk to the left of the elevator. No separate office doors could be ovserved from the reception area. On the reception area wall directly across from the elevator, your affiant observed large letters attached to the wall which read, "Saddleback Valley Escrow."

On June 3, 1985, your affiant contacted the Orange County Superior Court Clerk's Office to determine if a fictitious business name statement had been filed for Saddleback Valley Escrow. Your affiant was advised that on October 17, 1983, a fictitious business name statement was filed for Saddleback Valley Escrow, Inc., 23010 Lakeforest Drive, Suite C, Laguna Hills, California; showing the business being conducted by Potter-Hughes Financial Group, Inc. (a California corporation), P. O. Box 2809, Laguna Hills, California. Your affiant reviewed the June 1984 edition of the Orange-Coast South Telephone Directory, which listed the telephone number for Saddleback Valley Escrow, Inc. as (714) 855-2274. Your affiant called (714)855-2274 and was told that the current business address for Saddleback Valley Escrow was 23201 Mill Creek Road, Laguna Hills,

California.

It is the opinion of your affiant that Nationwide Home Loans, Inc., Pacific Financial Group, Inc., and Saddleback Valley Escrow, Inc. are occupying the entire third floor of the office building at 23201 Mill Creek Road, Laguna Hills, California, and that the documents requested in the search warrant are now on those premises. It is also the opinion of your affiant that the documents and property requested in the search warrant reasonably tend to show that the crime of theft by false pretenses was committed by Robert Potter and Steven Hughes.

DATED: 7/26/85) /s/ (Vinson J. Gilliam)
Affiant

Subscribed and sworn to before me this (26) day of (July), 19(85), at (11:45) o'clock (a).m., in the County of Ventura, California.

/s/
Judge of the Superior Court

APPENDIX B

SUPERIOR COURT

COUNTY OF VENTURA

STATE OF CALIFORNIA

SEARCH WARRANT) COURT NO._____

)

_____)

The People of the State of California, to any sheriff, police officer, constable, marshal or other peace officer in the County of Ventura:

Proof by [X] affidavit [ ] oral statement under oath, having been this day made before me by Vinson J. Gilliam that there is probable cause for believing that on the premises described as the third-floor office space occupied by Nationwide Home Loans, Inc., Pacific Cinancial Group, Inc., and Saddleback Valley Escrow, Inc., in the office building located at 23201 Mill Creek Road, Laguna Hills, California, a large, three-story building with mirrored siding, large white letters at the top

which read "Pacific Financial Group" and a sign on the front side of the property which reads "Hansch Financial, 23201" (photographs of the exterior of the office building are attached hereto and incorporated herein by reference as Exhibit "A"); there is now being concealed therein certain property, namely:

1. Nationwide Home Loans loan file, No. 83-339MK, pertaining to the real estate sales transaction involving borrower Rostam Firouzan and the property at 1016 Deepwood, Westlake Village, California, which closed escrow on August 1, 1983.

2. The broker invoice demand for Nationwide Home Loans, Loan No. 83-339MK, dated April 26, 1983.

3. The loan broker submission form submitted by Nationwide Home Loans to Santa Paula Savings & Loan Association with respect to Jan Withee Escrow No. 83170-BT.

4. A good-faith estimate of closing costs, dated March 30, 1983, signed by Rostam Firouzan.

5. Residential loan application for property at 1016 Deepwood Drive, Westlake Village, California, singed by Rostam Firouzan on March 30, 1983.

6. Diversified Mortgage System credit report, Case No. 531CONB, for Rostam Firouzan, dated March 16, 1983.

7. Nationwide Home Loans' request for verification of employment for Rostam Firouzan sent to Boulevard, Inc., dated Febryary 24, 1983.

8. Nationwide Home Loans' request for verification of deposit for Rostam Firouzan sent to Crocker Bank, dated February 1, 1983.

9. Natwionwide Home Loan' request for verification of deposit for Rostam Firouzan sent to Bank of America, dated

February 1, 1983.

10. Disposition of property form for 1016 Deepwood, Westlake Village, California, signed by Rostam Firouzan.

11. Source of funds and alimony and child support statement regarding 1016 Deepwood, Westlake Village, California, signed by Rostam Firouzan.

12. Promissory Note for $300,000, dated May 1, 1982, signed by Mancochen Firouzan.

13. Federal Fair Lending Notice for loan No. 83-339MK, dated March 30, 1983.

14. 1981 W-2 Wage and Tax Statement for Boulevard, Inc.

15. 1981 U.S. Individual Income Tax Return for Boulevard, Inc.

16. 1981 U.S. Corporation Income Tax Return for Boulevard, Inc.

17. 1980 U.S. Individual Income Tax Return for Rostam Firouzan.

18. 1980 U.S. Corporation Income Tax Return for Boulevard, Inc.

19. Appraisal report by Richard L. Koss, dated March 14, 1983, for 1016 Deepwood Drive, Westlake Village, California.

20. Preliminary title report from Lawyers Title Company of Ventura, Order No. 32532.

21. Jan Withee escrow instructions, Nos. 83170-BT, 83265-BT, 83272-BT, 83272-BTA, 83272-BTB, and 83272-BTC.

22. Letter dated March 11, 1983 from Mr. Rex Bricker of Santa Paula Savings & Loan Association to Robert Potter and Nationwide Home Loans.

23. Letter dated March 7, 1983 to Santa Paul Savings & Loan Association from Nationwide Home Loans, Robert Potter, Managing Partner.

24. Nationwide Home Loans Check No. 1087, dated July 29, 1983, drawn upon

Account No. 004319 in the amount of $10,800.

25. Intracoastal Realty & Investment Company real estate sales file for the real estate sales transaction involving borrower Rostam Firouzan and property at 1016 Deepwood Drive, Westlake Village, California, which was handled by Jan Withee Escrow and closed on August 1, 1983.

26. Americal Mortgage Company check No. 2516, drawn upon Security Pacific National Bank Account No. 23547 in the amount of $14,314.39, dated November 15, 1983.

27. Receipt for World Savings cashier's check, No. 174-079037-6, in the amount of $12,814.39.

28. Intracoastal Realty & Investment Company Check No. 1028, drawn upon Security Pacific National Bank Account No. 29689, dated August 3, 1983, in the amount of $10,500, made payable to Rostam Firouzan.

29. Intracoastal Realy & Investment Company Check No. 1022, drawn upon Security Pacific National Bank Account No. 29689, dated July 27, 1983, made payable to Security Pacific National Bank.

30. Receipt ofr the purchase of Security Pacific National Bank cashier's check, No. 23118441, dated July 27, 1983, in the amount of $50,000, made payable to Jan Withee Escrow.

31. Copy of World Savings & Loan Association's cashier's check, No. 174-079037-6, for $12,814.39, made payable to Santa Paul Saving & Loan.

32. Nationwide Home Loans' loan file, No. 82-146B, pertainint to the real estate sales transaction involving borrower Rostam Firouzan, sellers Gerald/Eileen Osterholt, and the property at 23238 Mulholland Highway, Calabasas, California, which closed approximately

June 9, 1982.

33. Broker invoice demand for Nationwide Home Loans, Loan No. 82-146B, to Gateway Savings & Loan, dated April 20, 1982.

34. Americal Mortgage Company loan status andinformation request to Homestead Savings & Loan Association regarding loan No. 99-35401-1, dated December 1, 1982.

35. Americal Mortgage Company loan status and information request to Gateway Savings & Loan Association regardin loan No. 03-62-20047, dated October 24, 1983.

36. Letter dated January 12, 1983 from the U.S. Small Business Administration to Americal Mortgage Company concerning the status of a loan to Gerald and Eileen Osterholt.

37. Diversified Mortgage Systems credit report on Rostam Firouzan, dated February 25, 1983, addressed to Americal

Mortgage Company.

38. NATIONWIDE Home Loans' request for verification of employment for Rostam Firouzan addressed to Boulevard, Inc., dated December 28, 1983.

39. Americal Mortgage request for verification of deposit for Rostam Firouzan addressed to Crocker Bank and signed by "Bob Potter" on February 1, 1983.

40. Information disclosure authorization form authorizing the release of credit information to Americal Mortgage Company, signed by Rostam Firouzan.

41. Residential loan application for $595,000 for property at 23238 Mulholland Highway, Calabasas, California, signed by Rostam Firouzan on April 8, 1983.

42. Americal Mortgage company file No. 82-146S/Osterholt, pertaining to the real estate transaction involving borrower Rostam Firouzan, sellers Gerald/Eileen

Osterholt, and property at 23238 Mulholland Highway, Calabasas, California, which closed approximately June 9, 1983.

43. First Centennial Title Company, Inc. preliminary report, No. LA-1130, dated January 3, 1983, addressed to Americal Mortgate Company, File nO. 82-146S/ Osterhold (sic).

44. First Centennial Title Company, Inc. revised preliminary report, No. LA-1130, dated January 3, 1983, addressed to Americal Mortgage Company, File NO. 82-146S/ Overhold (sic).

45. Intracoastal Realty & Investment Company real estate sales file pertaining to the real estate sales transaction involving borrower Rostam Firouzan, sellers Gerald/Eileen Ostherholt, and the property at 23238 Mulholland Highway, Calabasas, California, for which Robert Potter received

a Jan Withee Escrow check in the sum of $48,000 for commission on June 9, 1982.

46. Intracoastal Realty & Investment Company Check No. 1005, dated June 9, 1983, in the amount of $16,000, drawn upon Security Pacific National Bank Account No. 29689.

47. Intracoastal Realy & Investment Company Check No. 1006, dated June 9, 1983, in the amount of $24,000, drawn upon Security Pacific National Bank Account No. 29689.

48. Intracoastal Realty & Investment company Check No. 1007, dated June 9, 1983, in the amount of $24,000, drawn upon Security Pacific National Bank Account No. 29689.

49. Intracoastal Realty & Investment Company Check No. 1008, dated June 9, 1983, in the amount of $26,769, drawn upon Security Pacific National Bank Account No. 29689.

50. Intracoastal Realty & Investment Company Check No. 1009, dated June 10, 1983, in the amount of $27,000, drawn upon Security Pacific National Bank Account No. 19689.

51. Americal Mortgage Company File No. 82-148B, pertaining to the real estate sales transaction involving borrower Rostam Firouzan, seller Jonathan F. Waessil, and the property located at 2222 Verde Oak Drive, Los Angeles, California, lender Security Savings & Loan, and escrow company, Marshall Escrow Company, which closed on approximately November 3, 1982.

52. Residential loan application for $392,000 for property located 2222 Verde Oak Drive, Los Angeles, California, signed by Rostam Firouzan on August 25, 1982.

53. Residential loan application for $392,000, handwritten, for property

located 2222 Verde Oak Drive, Los Angeles, California, filled out by Jim North of Americal Mortgage Company.

54. A letter from Security Savings & Loan Association, dated October 8, 1982, addressed to Mr. Potter and Americal Mortgage Company.

55. 1980 U.S. Corporation Income Tax Return for Boulevard, Inc., signed by Rostam Firouzan on March 18, 1981, purportedly prepared by Abel Dean of Duncan Accounting Services.

56. 1981 U.S. Income Tax Return for Boulevard, Inc., signed by Rostam Firouzan on February 24, 1982 and purportedly prepared by A. Dean of Duncan Accounting Services.

57. Form W-2 Wage and Tax Statement for 1980 for Rostam Firouzan and Boulevard, Inc. showing wages of $239,861.89.

58. Form W-2 Wage and Tax Statement for 1981 for Rostam Firouzan and Boulevard, Inc., showing wages of $264.293.07.

59. Statement of income for seven months ending July 31, 1982 for Boulevard, Inc. on Dean & Company Accountants letterhead.

60. Statement of income for seven months ending July 31, 1982 for Boulevard, Inc. on Dean & Company Accountants letterhead, signed by Rostam Firouzan and A. Dean.

61. Good-faith estimate of closing costs for property located 2222 Verde Oak Drive, Los Angeles, California, signed by Rostam Firouzan on August 25, 1982.

62. Americal Mortgage loan and status information request addressed to Gibralter Savings & Loan with respect to borrower Jonathan F. Waessil and Loan No. 582-7701-6, signed by loan officer Robert Potter.

63. Diversified Mortgage & Credit Systems credit report for Rostam Firouzan, Case No. 531COMB, dated February 25, 1983.

64. Request for verification of deposit from Americal Mortgage Company addressed to Crocker Bank, dated September 7, 1982, for Rostam Firouzan.

65. Request for verification of deposit from Americal Mortgage Company addressed to Bank of America, dated September 22, 1982, for Rostam Firouzan.

66. Request for verification of employment from Americal Mortgage Company addressed to Boulevard, Inc., dated September 17, 1982, for Rostam Firouzan.

67. Agreement to purchase and receipt for deposit signed with respect to buyer Rostam Firouzan and seller Jonathan F. Waessil, signed on September 9, 1982, at 11:a.m., showing broker Vince Bonano, and Intracoastal as commissioned brokers.

68. A note for $392.000 in favor of Security Savings & Loan Association, signed by Rostam Firouzan, dated October 11, 1982.

69. A deed of trust for the amount of $392,000 in favor of Security Savings & Loan Association, signed by Rostam Firouzan on October 12, 1982.

70. Intracoastal Realty & Investment Company real estate sales file regarding the real estate sales transaction involving borrower Rostam Firouzan, seller Jonathan F. Waessil, propert located at 2222 Verde Oak Drive, Los Angeles, California, Marshall Escrow Company, Escrow No. 97036, which closed on approximately November 3, 1982.

71. Marshall Escrow Company escrow instructions, No. 6-97036, pertaining to property at 2222 Verde Oak Drive, Los Angeles, California, with buyer Rostam

Firouzan and seller Jonathan F. Waessil.

72. Marshall Escrow Company escrow instructions, No. 6-97036, with respect to property at 2222 Verde Oak Drive, Los Angeles, California, dated September 30, 1982, with respect to buyer Rostam Firouzan and seller Jonathan F. Waessil.

73. First Centennial Title Company, Inc. preliminary report, No. LA-1132, addressed to Bob, Americal Mortgage Company, No. 82-148B, dated July 8, 1982 with respect to property at 2222 Verde Oak Drive, Los Angeles, California.

74. Jan Withee Escrow Instructions, No. 83084-BT regarding the Firouzan/ Osterholt real estate sales transaction for the property located at 23238 Mulholland Highway, Calabasas, California.

75. Jan Withee Escrow escrow statement, No. 83084-BT, dated June 9, 1983.

76. Marshall Escrow Company escrow statement, No. 6-000097036, dated November 3, 1982 for property located at 2222 Verde Oak Drive, Los Angeles, California; which is: ___ stolen property

X property used to commit a felony

___ property in possession of, or being concealed by, another with intent to commit a public offense

X property tending to show a felony was committed, or a particular person committed it

THEREFORE YOU ARE COMMANDED to search the premises described, in the daytime, for the above-described property; and if you find the same or any part thereof, to bring it forthwith before this court by preparing and returning to this court a written inventory of said property and maintaining said property in your possession until further order of this court or other court having

jurisdiction over said matter.

Dated this (26) day of (July), 19(85), at (11:45)o'clock (a).m., in the County of Ventura, State of California.

/s/
Judge of the Superior Court
County of Ventura,
State of California

APPENDIX C

SUPERIOR COURT
COUNTY OF VENTURA
STATE OF CALIFORNIA
COURT NO._____

RETURN TO SEARCH WARRANT

The personal property set out on the inventory attached hereto was taken from the premises located and described as the third-floor office space occupied by Nationwide Home Loans, Inc., Pacific Financial Group, Inc., and Saddleback Valley Escrow, Inc., in the office building located at 23201 Mill Creek Road, Laguna Hills, California, a large, three-story building with morrored siding, large white letters at the top which read "Pacific Financial Group" and a sign on the front side of the property which reads "Hansch Financial, 23201" by virtue of a search warrant dated the 26th day of July, 1985, and issued by Judge Steven Perren of the

above-entitled court.

An inventory of the property taken from the above-described premises, marked Exhibit A, is attached hereto and incorporated herein by reference.

I, Vinson Jay Gilliam, by whom this warrant was executed, do swear that the attached inventory contains a true and detailed account of all the property taken by me under the warrant executed on July 31, 1985.

All of the property taken by virtue of said warrant will be retained in my custody, subject to the order of this court or of any other court in which the offense in respect to which the property or things taken is triable.

/s/
VINSON JAY GILLIAM

Subscribed and sworn to before me this(2nd) day of August, 19(85).

/s/
JUDGE STEVEN PERREN
Judge of the Superior Court

APPENDIX D

STATE OF CALIFORNIA] RECEIPT FOR PROPERTY
] ON SEARCH WARRANT
COUNTY OF VENTURA] (Penal Code § 1535)
]

Following is a detailed list of property taken by me under authority of a search warrant issued the (26) day of (July), 19(85), in the Ventura County (Superior) Court, _____ Department.

(Handwritten)

(1) File #83-438B Rostam Firouzan 5763 Cochran, Simi Valley

2) File #83-642-B Rostam Firouzan - 23551 Vanisia, Laguna Hills

3) File #82-148B Firouzan/Waessil 2222 Verde Oak Dr., Los Angeles

4) File #82-146B Osterholt/Firouzan 23238 Mulholland Hwy., Calabasas

5) File Marked "1030 23238 Mulholland, Calabasas, CA.

6) File marked "My House (Bob)" pertaining to property at 25791 Terra

Bella Ave., Laguna Hills and

borrower Tisa Rae Riley

7) Nationwide Home Loans Check #1087

8) Americal Mortgage Check #2516

9) Intracoastal Realty and Investment

Co. Check #1005, 1006, 1007, 1008,

1009, 1022, 1028

7/31/85

/s/)
Vinson Jay Gilliam

APPENDIX E

DECLARATION OF STEVEN WILLIAM HUGHES

I, STEVEN WILLIAM HUGHES, Defendant in the above-captioned matter declare as follows:

I was present in my office located at 23201 Mill Creek Road, Laguna Hills, California on July 31, 1985 when such premises was searched. There were approximately eleven (11) law enforcement officers present in myoffice at that time. Two officers were at the elevator door to the office, one officer was at the back stairway and there was a women officer at the women's restroom. these officers were not letting customers into the office and were searching all employees going in and out. There presence caused a complete disruption of my business.

The law enforcement personnel assured me that I was not the target of their

search but that they only were interested in investigating and securing evidence against Rostam Firouzan. they told me that they could make my life miserable and could stay there for the next twenty-four (24) hours, or that I could cooperate with them one hundred percent (100%) and take them to my storage locker. Based upon not wishing to further disrupt my business, and based upon the representations that they were not interested in me but were merely investigating Firouzan and a transaction related to him, I consented to take them to the storage locker. They did not inform me that I had a constitutional right not to give them any information. Because of the great number of law enforcement officers and the manner in which they presented me I did not belive that I had a right to refuse any my consent to accompany them to the mini warehouse or to make any

general search of the premises was coerced and not free and voluntary on my part.

When we arrived at the mini warehouse I never gave them consent to review the two files concerning the premises at 5763 Cochran, Simi Valley, California and 23551 Vanisia, Laguna Hills, California, nor to take from my possession information from tht two Shlomo Sfadia files which I had retrieved from storage. They said they were required to write down information about this file. I never gave them consent to make notes regarding any of the other files on the office premises. I never gave them consent to review the file pertaining to the property at 25791 Terra Bella Avenue, Laguna Hills, California which was marked "my house (Bob)". All of these files were contained in manila folders. I was nevver informed by them that I did not have to give them the location of the mini

storage warehouse and that I did not have to discuss it with them, and only responded to their questioning.

I declare under penalty of perjury that all of the statements contained herein are true and correct to the best of my knowledge and belief.

Executed February 4, 1987, at Ventura, California

STEVEN WILLIAM HUGHES

APPENDIX F

FILED
Ventura County Municipal Court
JAN 28 1987
By /s/
Deputy Clerk

FOLLIN & MITNICK
A Law Partnership
Lincoln's Inn Suite 202
950 County Square Drive
Ventura, California 93004
(805) 642-4194 ° (805) 983-1177

Attorneys for: Defendant
ROBERT POTTER

MUNICIPAL COURT

FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. ROBERT POTTER, Defendant.	CASE NO. FY 11510 FY 11511 FY 11512 NOTICE OF MOTION TO SUPPRESS EVIDENCE (Penal Code Section 1538.5) DATE: February 9, 1987 TIME: 9:00 a.m. CTRM: 11

TO: THE STATE OF CALIFORNIA, PLAINTIFF, AND MICHAEL BRADBURY DISTRICT ATTORNEY

ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on February 9, 1987 at 9:00 a.m. or as soon thereafter as the matter can be heard, in Courtroom 11 of the above-entitled Court, located at the Hall of Justice, 800 South Victoria Avenue, Ventura, California, Defendant, ROBERT POTTER, will move the Court for an order to suppress any tangible or intangible things obtained in the above-captioned matter as a result of a search or seizure.

This motion will be made on all of the following grounds enumerated in Section 1538.8 of the Penal Code;

(1) The search or seizure without a warrant was unreasonable.

(2) The search or seizure with a warrant was unreasonable because:

(i) The warrant was insufficient on its face;

(ii) The property or evidence obtained is not that described in the warrant;

(iii) The method of execution of the warrant violated Federal or State Constitutional standards;

(iv) There were other violations of Federal or State Constitutional standards.

The motion will be based on this notice of motion, on the declaration, memorandum of points and authorities, to be served and filed subsequent hereto, and on the records on file herein.

DATED: January 28, 1987

FOLLIN ANDMITNICK

By: _____
DAVID JOEL FOLLIN
Attorneys for
Defendant
ROBERT POTTER

APPENDIX G

FILED

AUG 25 1988

County Clerk

/s/
Deputy County Clerk

MICHAEL A. CARTY
Attorney at Law
1215 De La Vina Street, Ste. J
Santa Barbara, CA 93101
Telephone: (805) 963-7716
Attorney for Defendant
ROBERT OTTO POTTER

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Attorney for Defendant
STEVEN WILLIAM HUGHES

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. STEVEN WILLIAM HUGHES, ROBERT OTTO POTTER and MARK STEVEN KNAPP, Defendants.	No. CR 22549 NOTICE OF MOTION AND MOTION TO SUPPRESS AND RETURN EVIDENCE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

TO MICHAEL D. BRADBURY, District Attorney for the County of Ventura, to ROBERT MEYERS,

Deputy District Attorney for the County of Ventura, and to the Clerk of the Superior Court:

NOTICE IS HEREBY GIVEN that on September 6, 1988 at 8:30 a.m. or as soon thereafter as the matter may be heard, in Courtroom 22 of this Court, located at the Hall of Justice, 800 So. Victoria Avenue, Ventura, California, Defendants ROBERT OTTO POTTER and STEVEN WILLIAM HUGHES will and do hereby move the Court for an Order suppressing the items of evidence enumerated in the attached Points and Authorities.

This Motion is based on this Notice and Motion, on the Memorandum of Points and Authorities submitted herewith, on the records and files herein, including but not limited to the transcripts of the preliminary hearing, and on such oral and documentary evidence as may be presented

at the hearing of this motion.

Dated: August 22, 1988

/s/
MICHAEL A. CARTY
Attorney for Defendant
ROBERT OTTO POTTER

/s/
TERRENCE L. CANNON
Attorney for Defendant
STEVEN WILLIAM HUGHES

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

This is a motion to suppress (1) documents seized during an unconstitutional exploratory search of a premises described in an otherwise valid warrant, (2) documents seized during an involuntary search of a premises not authorized by that warrant, and (3) documents released to law enforcement as a result of misrepresentations to defendants and to their attorney.

II

SPECIFICATION OF ITEMS TO BE SUPPRESSED AND GROUNDS FOR SUPPRESSION

Defendants seek order suppressing the following evidence:

1. The "Verde Oak" file and documents (Exh. 1M), described in the warrant but seized from a location not authorized to be searched as a result of (a) a ruse

utilized to procure defendant's consent to the unauthorized search and (b) the officers' improper assertion of authority.

2. The "Mulholland" file and documents (Exh. 2M-1), described in the warrant but seized from a location not authorized to be searched as a result of (a) a ruse utilized to procure defendants' consent to the unauthorized search and (b) the officers' improper assertion of authority.

3. The "Deepwood" file and documents (Exh. 4M), described in the warrant, not located on the premises authorized to be searched, but instead procured from defendants' attorney as a result of misrepresentations by law enforcement.

4. The "Cochran" file and documents (Exh. 5M), not described in the warrant and not seized from the premises authorized to be searched as a result of (a) a ruse utilized to procure defendants' consent to the

unauthorized search, (b) the officers' improper assertion of authority, (c) an unconstitutional exploratory search.

5. The "Terra Bella" file and documents (Exh. 3M), not described in the warrant, seized from the premises authorized to be searched during an unconstitutional exploratory search.

III

NATURE OF THE CASE

Defendants are charged by First Amended Information of one count of conspiracy to violate and two counts of violations of Penal Code section 487.1, grant (sic) theft.[1/]

[1/] The Information alleges 13 overt acts undertaken in furtherance of this conspiracy, The files sought to be suppressed pertain to the Information as follows: the "Verde Oak" file is the subject of Overt Act No. 1; the "Mulholland File" is the subject of Overt Act No. 3; the "Deepwood" file is the subject of Overt Act Nos. 4 through 11 and is also the subject of Count 2; the "Cochran" file is the subject of Overt Act No. 12 and is also the subject of Count 3; the "Terra Bella" file is the subject of Overt Act No. 2.

The documents sought to be suppressed constitute evidence of "straw buyer" transactions, in which a person who is not a bona fide purchaser obtains loan funds by falsely representing to the lender that he is actually purchasing the real property.

APPENDIX H

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,	)	
Plaintiff-Respondent,	)	Superior Court No. CR 22549
vs.	)	
ROBERT OTTO PORTER and STEVEN WILLIAM HUGHES,	)	
Defendants-Appellants.	)	

APPEAL FROM THE SUPERIOR COURT
OF VENTURA COUNTY
HONORABLE KENNETH R. YEGAN,
JUDGE PRESIDING

REPORTERS' TRANSCRIPT ON APPEAL

APPEARANCES:

For Plaintiff-Respondent:
JOHN VAN DE KAMP
State Attorney General
3580 Wilshire Boulevard
Los Angeles, CA 90010

For Defendant-Appellant Robert Otto Potter:
MICHAEL A. CARTY
Attorney at Law
1215 De La Vina Street
Santa Barbara, CA 93101

For Defendant-Appellant Steven William Hughes
TERRENCE . CANNON
Attorney at Law
1215 De La Vina Street
Santa Barbara, CA 93101

MARY LOPUCK, CSR 3640
ROSSANA GARCIA,
CSR 6303
SUSAN RIZZARDI,
CSR 3928
DAVID O'GRADY, CSR 3146
Official Reporters
800 South Victoria
Avenue, Room 313
Ventura, California
93009

. . . .

So Mr. Meyers isn't going to be a witness at a De Novo 1538.8 hearing in Superior Court because there isn't going to be a De Novo 1538.5 hearing in Superior Court. Because as I have indicated the suppression motion has to be determined upon the testimony which was elicited at that 1548.5 hearing which was heard before the magistrate, Judge Blanford.

He's made certain factual findings which are binding on this Court, made those findings and in his legal analysis as 423 through 427 in the preliminary hearing transcript credited the testimony of the

investigator Mr. Gilliam, he elected in his power as the trier of fact not to credit the testimony of Mr. Hughes on the issues which can be labeled consent, subterfuge, submission to authority and use of a ruse or trickery.

Read and considered People versus James 19 Cal.3d. Page 99, concerning failure to give Miranda warnings to Mr. Hughes. The claim you are to inform him of his right to refuse, there was no obligation on behalf of Mr. Meyers or any person in law enforcement to tell him that he was the target of the investigation. Failure or election to advise along those lines are just one factor to be considered by the Court.

And there is a case which says that as long as there is no outright fraud, it is just not incumbent upon law enforcement authorities to not give a true, complete

picture to someone who consent is being sought by law enforcement. That is People versus Superior Court 271 Cal.App.2d, 524 at Pages 527 through 528. Headnote 2 does Shepardize out information imparted by Mr. Meyers was not false.

So there are four aspects to this suppression motion. First of all, how the officers found themselves at this storage facility at 29992 El Pacifico, because it was not articulated inthe warrant itself. And basically the magistrate credited Mr. Gilliam's testimony that Mr. Hughes consented to a search of that particular storage facility. So that is the end of any issue concerning the storage facility.

It also goes to this transaction which I call the Deepwood file. The same rational. No evidence credited by the magistrate concerning a lack of consent, ruse, trickery, subterfuge or

misrepresentation.

Concerning the Cochran file which was taken from the storage facility, not described in the warrant, the magistrate found that this was in plain view. And while I don't agree with all of his analyses on Pages 423 and 424 of the preliminary hearing examination, Mr. Hughes did consent to the officers being present at that facility.

The officers have a lawful right to be present. And thereafter in plain view they saw this file, which had Mr. Firouzan's name on it, and by reason of the rule articulated in People versus Ramos, 30 Ca.ed. 553, Pages 572 through 573, there is a sufficient nexus for the police to seize and look at that Cochran file. That is the magistrates finding. It is not erroneous as a matter of law.

The next one is what is known as the Terra Bella Street property. Police had the authority to look into this file. And when they were executing the search warrant, they were not bound by the file label. In fact, they are commanded by the magistrate to search for materials which are reasonably related to the investigation. That is the magistrate's finding.

And finally the magistrate at Page 426 made findings concerning inevitable discovery discussed in what I consider to be the reading of case People versus Superior Court, Tunch, 80 Cal.App.3d 665, 673. Commonsense tells me it is true that the authorities were aware of the existence of Mr. Firouzan, also knew of the existence of this person Tisa, T-i-s-a, Riley. They had the power to and during the process of receiving these loan applications from the various lending institutions.

It also had a separate and distinct line of information by reason of this attorney who is also an apparent victim, Alan Fieldings, who had filed a civil suit in connection with his attempts to be made whole on the second trust deed note on this Deepwood property.

So for those reasons the motion to recuse Mr. Meyers is denied. The suppression motion is denied.

That leads me to the sticky portion of the matters which I have to decide today. That is this 995 motion. That is why I asked to see the Exhibit 5L3606, which appears to be a check written on Crocker National Bank for $98,000 with the maker being Home Rediscount Services Corporation and bears a making date of August the 11th, 1983.

And it's subscribed by a person who's in apparent power to write checks upon that

account from Home Rediscounting Services Corporation, someone by the name of Ray E. Horton.

(ln. 17, p. 109 - ln. 28, p. 112)

.... And I can't say to myself that this ruling is erroneous as a matter of law as to this Home Rediscounting Services Corporation $98,000 draft.

So when Judge Blanford holds the defendants over on a preliminary hearing, he factually determines that there is one overall conspiracy, he factually determines based upon the excerpts that I have just mentioned and upon the face of the draft itself, that this is a $98,000 loan. The actual approval of funds is an ante-cedent to create a negotiable piece of paper.

So with those factual underpinnings and premises the 995 motion has to be denied. It is only directed to Counts 1

and 3, so it is denied. So the motion to recuse is denied. The 1538.5 is denied and the 995 is denied.

(lns. 1-15, p. 130)

APPENDIX I

PUBLISHER'S NOTE:

ORIGINAL PAGINATION IS NOT CONTINUOUS.

MUNICIPAL COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

COURTROOM 26 JUDGE ALBERT T. BLANFORD, MAGISTRATE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. ROBERT POTTER, STEVEN HUGHES, and MARK KNAPP, Defendants.	)	No. FY 11510 FY 11511 FY 11512

REPORTER'S TRANSCRIPT
OF PRELIMINARY HEARING

JUNE 3, 1987

APPEARANCES:

For the Plaintiff:	ROBERT MEYERS Deputy District Attorney
For the Defendant: (Potter)	DAVID FOLLIN, Attorney at Law
For the Defendant: (Hughes)	KELTON GIBSON Attorney at Law
For the Defendant: (Knapp)	DAVID AMMONS Deputy Public Defender
Reported by:	DAVID J. O'GRADY Senior Reporter

. . . .

THE COURT: First of all with regard to the property seized with the Mill Creek Road building with regard to the items such as the checks that were specifically set forth in the search warrant, I have no problem whatsoever. I am assuming now by all my remarks that the warrant was validly issued and was not invalid on the grounds that it will have the letter I have taken under submission and I am waiting for further testimony from Judge Perren -- I am assuming now that it was a valid warrant and they were then validly in the premises at Mill Creek Road property and, as I said before, with regard to the items that were specifically listed in the warrant, I have no problem whatsoever. With regard to the items at the mini-warehouse that were seized, I find that Mr. -- that Mr. Hughes' consent to the search of the mini-warehouse

for the items listed in the search warrant was free and voluntary. To the extent that there is conflict between the testimony of Mr. Gilliam and that of Mr. Bowne, Mr. Hughes or Mr. Walters, I feel that Mr. Gilliam's testimony is the more creditable.

With the items seized at the mini-warehouse were not listed specifically in the search warrant, with regard to those items I feel that Mr. Gilliam did reasonably believe, and I find that it did relate to the crimes under investigation, and those items were in plain view within the meaning of the law. When you are executing -- a person is executing a warrant such as this where they are looking for specifically described items set forth in the warrant and when the items sought to be seized pursuant to the warrant are documents, it would seem to me that the proper method for a person executing that warrant would

be to first look in the areas for, for example, files that are clearly labeled with the names of entities and individuals and addresses that clearly indicate that they're -- the likelihood of the documents they are looking for being in those particular type of labels. But let's not forget the fact that files can be mislabeled either intentionally or unintentionally and while if all the documents listed in the warrant were discovered then there would be no point in continuing on and they would certainly have no right to just look through files willy-nilly after all the documents in the warrant had been discovered. But it would seem to me that there was nothing wrong with the officers, even though they were -- they were, Mr. Gilliam and the others, were on their way over to the mini-warehouse, there was nothing wrong with the officers continuing

their examination of looking for documents in the -- at the Mill Street warehouse, and there is also no limitation on the files that could be looked at in the warehouse because the consent to search for the items in the warehouse was freely given by Mr. Hughes. What I am attempting to say is that the officers are not limited to just looking in files that are labeled in a particular fashion. Because, as I say, those labels on documents can be intentionally or unintentionally mislabeled and until they have located all of the documents in the search warrant they have a right to continue looking through folders and areas where it is likely the document would be located.

So, I have no problem with the documents that were also -- that were located at the mini-warehouse. They were in that premises lawfully and they -- the documents

that they did locate within and under the meaning of law were in plain view. Also they were items, even though not specifically mentioned in the warrant, they were items that Mr. Gilliam reasonably believed related to the investigation that he was undertaking at the time and so, therefore, I have no problem with the documents seized at the mini-warehouse.

With regard to the document in My House, Bob file that was located at the Mill Creek Road building apparently while Mr. Gilliam was at the warehouse, again, just because the file was labeled My House, Bob, that certainly does not prohibit the officers from looking in that file to see whether some of the documents they were looking for were in that file. They had not at that point located all of the documents that were set forth in the search warrant and they had every right to

look in that file to see if documents that were set forth in the search warrant were contained in that file and when he did examine that file he, Mr. Gilliam, examined that file, he found documents that in his opinion reasonably related to the investigation he was undertaking and I therefore factually agree with him that under the evidence I heard they did; so therefore there is no problem with the seizure of the My House, Bob file.

With regard to the Deepwood file, again the consent to turn that file over to law enforcement through the district attorney's office by way of the Orange County Sheriff's Office, from the evidence I heard, was clearly voluntary on the part of both Mr. Hughes and Mr. Potter. I also feel based on the evidence that I have heard that the items seized eventually would have been discovered and obtained

of a search by other lawful means.

(ln. 3, p. 423 - ln. 7, p. 426)

APPENDIX J

MUNICIPAL COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

COURTROOM 26 JUDGE ALBERT T. BLANFORD, MAGISTRATE

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. ROBERT POTTER, STEVEN HIGHES, and MARK KNAPP, Defendants.	)	No. FY 11510 FY 11511 FY 11512

REPORTER'S TRANSCRIPT
OF PRELIMINARY HEARING

JUNE 3, 1987

APPEARANCES:

For the Plaintiff:	ROBERT MEYERS Deputy District Attorney
For the Defendant: (Potter)	DAVID FOLLIN Attorney at Law
For the Defendant: (Hughes)	KELTON GIBSON Attorney at Law
For the Defendant: (Knapp)	DAVID AMMONS Deputy Public Defender
Reported by:	DAVID J. O'GRADY Senior Reporter

....

A Secure the building so the search warrant could be served.

Q Was that the entire building that was secured?

A. I believe it was the third floor, sir.

Q What did you do?

A I initially took control of the uniformed deputies and placed them at various positions to make sure the building was sealed and that I went ahead and assisted Ventura.

Q So were you in uniform also?

A No, sir.

Q Where did you place your five deputies?

A As I remember, the majority of them were downstairs. I think we had one or two upstairs to make sure that no documents left the third floor.

Q If there were one or two upstairs, that would mean three or four downstairs plus the police unit with the dog, correct?

A Well, I think it was more like three doenstairs, two upstairs maybe.

Q What were the three doing downstairs?

A They were just making sure that no documents left the building or came in the building or people didn't go in and out with documents that would pertain to this establishment.

Q Were they allowing customers to come in and out of the building?

A To my best recollection, yes.

Q Were the allowing customers to come in and out of the third floor office?

A They were allowing them in.

Q Was everyone who entered searched before they entered?

A I believe that wer were checking for documents as people came in.

Q So if someone had a briefcase, for instance, would that briefcase be checked if they were going to the third floor?

A Not if they were going. If they came into the main office where the search warrant was being served.

Q I don't understand. Let me back up.

Can you explain that.

As they were coming in, were the searched?

A They weren't searched as they entered the building. They were -- I'm not real positive about that because I don't remember exactly, but they may have been asked to open their briefcases when they arrived at the third floor.

Q What about if someone was leavin
leaving? What would the deputies do?

A As lona s none of the documents pertaining to the search warrant were on the -- I think they were allowed to leave.

Q If somebody was leaving with a briefcase, what you your deputies have done?

A They would have asked to look inside.

Q And check the documents there?

A They would have called somebody from Ventura to check the documents. They wouldn't know what to look for.

(ln. 1, p. 73 - ln. 27, p. 74)

....attorney investigator, were you looking for items specifically described in the search warrant?

A That's correct.

Q Did you overhear any law enforcement personnel advise the person that you

have identified, who for the record noted was the Defendant Hughes, that Hughes was not the target of the search and that they were only investigating or securing evidence against Rostam Firouzan?

A No, sir.

Q Did you hear any law enforcement personnel advise the Defendant Hughes that they would make his life miserable and could stay there for the next 24 hours, or that he could cooperate with them 100 percent and take them to the storage locker?

A No, sir.

Q If you had heard something like that, would you have remembered it?

A I'm sure I would have.

MR. MEYERS: No further questions.

THE COURT: Anything further, Mr. Gibson.

REDIRECT EXAMINATION

BY MR. GIBSON:

Q In the briefing session that you had, were you told that the focus of the investigation was Steven Hughes and Robert Potter?

A I believe it was the corporation itself.

Q Had you heard the name Potter and Hughes before going there to execute the warrant?

A Yes.

Q And who did you understand they were?

A They were some of the principals involved as owners of this business.

Q And you -- did you have reason to believe they were the ones being investigated?

A I -- I assumed the fact since they owned the company, that their company

and they were under investigation.

Q Before having your conversation with Mr. Hughes, did you advise him of his constitutional rights pursuant to Miranda?

A No, sir.

Q Did you hear any law enforcement agent advise Mr. Hughes of his rights pursuant to Miranda?

A No, sir.

Q Did you hear anyone advise Mr. Hughes that he had the right not to answer questions that were being posed to him?

A Well, I didn't hear any questions posed to him, but no.

Q Did you hear anyone associated with law enforcement advise Mr. Hughes or relate to him that in fact he was the focus of the investigations?

A No.

(ln. 1, p. 85 - ln. 26, p. 86)

....third floor?

A No.

Q Did you hear any threats or arguments from people not associated with law enforcement to people associated with law enforcement during the search"

A Explain that. I'm lost.

Q Were there any arguments between civilians and law enforcement individuals?

A Not to my knowledge.

MR. FOLLIN: No further questions.

THE COURT: Any redirect, Mr. Ammons.

RECROSS-EXAMINATION

BY MR. AMMONS:

Q Officer, directing your attention first to the briefing that you had the night before the search warrant was served, I think you indicated that it was explained to you where you were going and more or less what you are looking for and that the

main interest was in the items described or listed in the search warrant itself; is that correct?

MR MEYERS: Objection. Misstates the evidence. There was no eivdence about what he was informed of other than he was informed to look for the items specifically listed in the search warrant.

THE COURT: Overruled.

You may answer the question.

THE WITNESS: Can you repeat the question?

THE COURT: Read the pending question back.

(Record read)

THE WITNESS: That's correct.

Q BY MR. AMMONS: Did you the night before get to look at a copy of the search warrant? Did you look at the list of items that you were talking about?

A Yes, I did.

Q While you were at the location where the search warrant was being served, did you have a copy of the search warrant or the list of items?

A Copy was there I believe. I'm not -- I didn't have a copy personally.

Q You indicated that when you find something that you thought was listed in the search warrant, that you would take it to somebody from Ventura because they would know what it was.

When you found something, would you check with the search warrant first or would you just rely on your memory and take it a Ventura officer? I'm trying to figure out how you initially decided this might be something that Ventura is interested in.

A It was really simple. I had a Ventura officer with me and I would just point the things out to him, and he would be the one who would check.

Q Who was that officer that was assisting you and were showing things to?

A I don't remember

Q Can you remember -- do you remember well enough to give us a description so we might be able to figure out who it was?

A I believe he was Mexican.

Q And was he an investigator with the Ventura County District Attorney's Office?

A Yes, sir.

Q To be charitable, is he a little bit on the plump side?

A I believe he was.

Q Were you showing this investigator everything that you found or just the things that you thought were pertinent?

A Things that appeared to be pertinent.

Q How did you -- what guideline were you using to decide that something might be pertinent?

A Things that had the principals' names on it.

Q And what names were those?

A Hughes and Potter, the other name that you mentioned here.

Q Firouzan or Knapp?

A Firouzan, I believe.

Q When you would show something to this person from Ventura, would that person check with the -- would that person check wit the search warrant and determine whether that file was something to be seized or not?

A I don't have personal knowledge that he checked the search warrant, but it was my understanding that's what they did.

MR. AMMONS: No other questions right now, your Honor.

(pp. 89 - 91)

STEVE WALTERS,

called as a witness on behalf of the Defendant Hughes, having been first duly sworn, was examined and testified as follows:

THE CLERK: Please take the witness stand. State and spell your name for the record.

THE WITNESS: Steve Douglas Walters, W-a-l-t-e-r-s.

DIRECT EXAMINATION

BY MR. GIBSON:

Q What is your occupation, Mr. Walters?

A I'm a vice-president of a mortgage banking firm.

Q What is the name of the company?

A Pacific Financial Group.

Q Were you employed there on July 31, 1985?

A Yes, I was

Q What was your position at that time?

A General manager.

Q Were you present on that day whan a number of law enforcement agents executed a search warrant on the office of Pacific Financial Group?

A Yes, I was.

Q What time did you arrive at work that morning?

A Approximately little bit after 9:00.

Q Were there law enforcement agents there at the time?

A I believe in the parking lot.

Q What do you recall there being in the parking lot?

A I didn't really think about it. I saw about two officer's cars downstairs.

A Anything else that you recall unusual in the parking lot that morning?

A No, sir.

Q What did you do upon entering the building?

A Just went to my office, got a cup of coffee, regular business day.

Q What happened next to your recollection in connection with the execution of the search warrant?

A I was paged through the front desk for some people needed to see me, and it was, I believe, few officers long with Mr. Meyers and Mr. Gilliam serving me with a search warrant.

Q Did you have a conversation with them as to what they were looking for?

A Yes. I asked them into my office to come sit down, get out of the main lobby, and asked them what they were looking for. And they said they were looking for some files and paperwork and I said, okay, fine, no problem.

Q Did they say who they were investigating?

A No, they didn't.

(ln. 1, p. 119 - ln. 25, p. 120)

....office?

A Occasionally called back to the front desk because I had to have somebody go up and explain who was coming up and down the elevator, if they're employees or couriers, if they were delivering clients and what their purpose was.

Q To your knowledge, was anyone let into the building other than those people who you in effect cleared to come in?

A No, I don't believe so.

Q What were they doing to the other people?

A Turning them away, I guess downstairs.

Q What type effect did this have on the business that was going on?

A Obviously slowed it down somewhat.

Q Were they searching briefcases or anything like that?

A I believe they were and inquiring on any couriers and stuff, what they were taking out.

Q Were the documents being taken in and out being examined?

A Yes, they were.

Q When Mr. Meyers -- strike that.

Was it Mr. Meyers who explained to you the purpose of the warrant?

A I think Mr. Gilliam.

Q What did Mr. Gilliam explain to you the purpose was?

A To search for some paper files that had -- he didn't come right out and say anything too specific, but needed

Q So he had been there at least one half hour?

A Within an hour, yes, sir.

Q Now, in that conversation no one advised Mr. Hughes that he had to consent to the search of the storage area; is that correct?

A That's correct.

Q In fact, during that period of -- during that conversation, no one advised Mr. Hughes that they would make his life miserable and they could stay there for the next 24 hours, or that he cold cooperate with them 100 percent and take them to the storage locker.

No one said that?

A Similar statement to that was said.

Q Who said it?

A I believe it was you, sir.

Q How long had you been employed by the defendants prior to the service of the search warrant on July 31st, 1985?

A Little bit over a year, sir.

Q Do you recall Mr. Gilliam advising Mr. Hughes that the search warrant did not give him authority to search the storage area where Mr. Hughes believed the reports might be located?

A I believe he did.

Q Do you recall Mr. Gilliam further explaining that he could apply for a search warrant, but that a search warrant may or may not be granted?

A I honestly don't recall, no.

(lns. 1-27, p. 128)

....comment though.

Q But after what? The comment that it would take a long time to search the Mill Creek office?

A The cooperational comment, yes, sir.

MR. MEYERS: No further questions.

THE COURT: Any redirect, Mr. Gibson.

REDIRECT EXAMINATION

BY MR. GIBSON:

Q What did Mr. Meyers say the consequences would be if you and Mr. Hughes didn't cooperate?

A They would --

MR. MEYERS: Objection, Assumes facts not in evidence.

THE COURT: Objection sustained.

Q BY MR. GIBSON: Did Mr. Meyers make any indication as to what the consequences would be, in other words, what they would do if you andMr. Hughes didn't cooperate 100 percent?

A Well, if they were searching at their own leisure without our cooperation, they would take their time to search

throughout the complete office while continuing to basically keep the office closed.

Q Did you have any feeling that this would disrupt the business?

A I had tremendous feeling that would definitely disrupt the business.

Q Did you have any feeling that having this many law enforcement officers hanging around with the business closed would have an effect upon the business reputation?

A It had a tremendous effect on the business's reputation.

MR. GIBSON: Nothing further.

THE COURT: Any redirect, Mr. Follin.

MR. FOLLIN: No redirect.

THE COURT: Mr. Ammons.

MR. AMMONS: No, no questions, your Honor.

THE COURT: Anything further now of this witness, Mr. Meyers?

MR. MEYERS: No, your Honor.

THE COURT: You may step down, Mr. Walters.

Any other witnesses now from Orange County that you want to call out of order, Mr. Gibson?

MR. GIBSON: No. Thank you for letting me go out of order.

THE COURT: You may call the next witness, Mr. Meyers.

MR. FOLLIN: Mr. Walters is excused?

THE COURT: With the same understanding, he may leave. He's not formally excused unless you wish to formally excuse him.

MR. MEYERS: No, your Honor.

The people call Vinse Gilliam.

(ln. 2, p. 130 - ln. 24, p. 131)

....the search warrant and that they were to search for only the items listed in the search warrant.

Q Approximately what time on July 31, 1985 did you actually serve or begin the execution of the search warrant?

A If I can refer to my report I can give you the exact time. Would have been 9:15 a.m.

Q Now, with respect to the securing the premises during the execution of the search warrant, what did you set up in that regard?

A As far as securing the premises, Sergeant Tom Garner and I believe Joe Pulido from the ventura County District Attorney's Office were responsible for securing the premises.

Q In other words, making sure that no one carried any of the documents listed in the search warrant out an exit, something like that?

A That's correct.

Q What did you do with respect to the service of the search warrant?

A Upon entering the third floor, there was a receptionist that I contacted and I identified the fact that I was with the Ventura County District Attorney's Office. There was also members of the Orange County Sheriff's Office present and that we were there to execute a search warrant.

Q And approximately how many people were in the reception area with you when you notified the receptionist?

A I would estimate probably six or seven.

Q What happened after you notified the receptionist?

A I asked if Mr. Hughes or Mr. Potter were on the premises. She indicated they were not. And at that time she indicated that Mr. Steve Walters, the general

manager was, and I asked to speak to him.

Q And what happened then?

A He met us in the reception area, and I again advised him that -- who we were and we were there to execute a search warrant, at which point he invited us back into his office.

Q And did you go back to his office?

A Yes.

Q Did anyone go with you?

A Yes.

Q Who was that?

A I believe Sergeant Tom Garner was with myself and yourself.

Q And what happened when you got back to Mr. Walters' office?

A I immediately gave Mr. Walters a copy of the search warrant and informed him that we were looking for three loan files involving IntraCoastal Realty and

Development, American Mortgage, and Nationwide Home Loans, and that the files pertained to borrower Rostam Firouzan.

Q What was Mr. Walters' response?

A Mr. Walters indicated cooperation.

Q And before there was any opportunity to actually begin the physical search, did anyone else arrive?

A Yes.

Q Who was that?

A Mr. Steve Hughes.

Q Is Mr. Hughes in the courtroom today?

A Yes, he is.

A Where is he located?

A The gentleman with his arm in a sling.

MR. MEYERS: May the record reflect the identification of the defendant Steve Hughes?

THE COURT: Record will so reflect.

Q BY MR. MEYERS: Approximately when did the defendant Hughes arrive?

A Again if I can refer to my report I think I can give you the exact time. It would have been 9:23 a.m.

Q When Mr. Hughes arrived, what happened then?

A I again readvised him that we were with the Ventura County District Attorney's Office and the Orange County Sheriff's Office on the premises to execute a search warrant. I advised Mr. Hughes that we had given a copy of it to Mr. Walters.

Q And where did -- where were you physically located when this conversation took place?

A Mr. Walters' office.

Q And who was present at that time when Mr. Hughes arrived?

A Again, I believe it was Detective Garner, myself and yourself.

Q What happened after you advised Mr. Hughes that you had given Mr. Walters a copy of the search warrant?

A I advised Mr. Hughes that he could assist us in locating the documents enumeratred in the search warrant, and that then it would not be necessary for the search team to conduct a search of the entire third floor, if they could be produced.

Q and what was Mr. Hughes' response?

A Mr. Hughes indicated that he didn't have anything to hide and indicated complete cooperation.

Q What happened next?

A We then exited Mr. Walters' office and went to some file cabinets located adjacent to Mr. Walters' office where Mr. Hughes attempted to look for the files enumerated in the warrant.

Q Can you see Defense Exhibit A from where you're located?

A Yes.

Q Do you have a view of --

THE COURT: Yes, I can see it.

Q BY MR. MEYERS: There are a group of file cabinets marked F-1.

Are those file cabinets that Mr. Hughes led you to?

A Yes, they are.

Q And what happened at the file cabinets?

A He was unable to locate any of the files enumerated in the search warrant, at which point we proceeded around the office to the files identified on the chart as F-2.

Q And what happened there?

A Where he again looked through the file cabinets in an effort to locate the files listed in the warrant and again

was unable to locate the files.

Q Now, by that time did Mr. Hughes actually have a copy of the search warrant in his hand or something to identify what he was looking for?

A I believe as soon as I informed him that I had given a copy to Mr. Walters, Mr. Walters gave the copy to Mr. Hughes.

Q What happened after Mr. Hughes was unable to locate the documents listed in the search warrant at the F-2 file area?

A While we were looking for the files, or while Mr. Hughes was looking for the files, he informed me that they only kept files in the main office for approximately six months. And that quite possibly the files we were looking for in the search warrant were located at their mini storage facility.

Q Did you then ask Mr. Hughes concerning the location of some checks that

were listed in the search warrant?

A Again, my recollection is that Mr. Hughes had a copy of the search warrant and was aware the documents we were looking for, and had us proceed into Mr. Potter's office where he produced a box that he indicated had the checks in it that we were looking for, at or at least contained the checks pertaining to IntraCoastal Realty and Americal Mortgage.

Q Did Mr. Hughes actually look through the checks himself to locate the specific items or did he just point out the location of the checks to someone?

A He pulled out the box that was located in one of the cupboards in Mr. Potter's office and I believe was just placed on Mr. Potter's desk at that point. I don't believe we went through them.

Q After locating the checks, what if anything did Mr. Hughes say with respect

to the other items in the search warrant?

A I believe Mr. Hughes had looked through Mr. Potter's office in an effort to locate the files enumerated, was not able to locate them.

At that point he indicated that the files must be located over at the storage area and he indicated that he would be willing to go over and get those files for us.

Q Now, after Mr. Hughes made that statement, what if anything did you say to him?

A I informed Mr. Hughes that myself and members of the search team would like to accompany him to that warehouse in order to get those documents, but that our search warrant only pertained to the location on Mill Creek Road.

Q And did you advise him anything further concerning your ability to obtain a search warrant?

A Yes. I informed him based on his statement and his belief the files were located at a different location that I could request a judge to issue another search warrant, and the judge may or may not issue the warrant. Or with his cooperation and his willingness he could voluntarily consent to allow us to go to that location.

(ln. 1, p. 34 - ln. 25, p. 139)

THE WITNESS: Probably,

Q BY MR, MEYERS: After Mr. Hughes had indicated for the second time that he would take you to the storage locker area, what happened then?

A Well, I advised Mr. Hughes that he -- that I wanted to make sure he was aware that he was giving up the right for me to request a second warrant. And I informed him to that effect, and he -- I don't think he verbally said anything but

shook his head that he understood.

Q So, in other words, you went through the admonition again that you may or may not be able to get a search warrant?

A I believe I informed him that, you know, by consenting to allow us to go with him, he was giving up the right for me to seek a second warrant.

Q To require you to seek a second warrant?

A Yes.

Q What happened after Mr. Hughes again nodded his assent to you?

A We then made arrangements to go to the mini warehouse, at which time I offered to drive my county vehicle, and we went downstaris to the parking lot. Myself, Investigator Dick Haas wit the Ventura County District Attorney's Office, Mr. Hughes, and Mr. Meyers then drove to the mini warehouse following the direction of

Mr. Hughes.

(lns. 1-24, p. 142)

...he thought the files possibly could be located in and Investigator Haas and I then got those boxes down and searched through them.

Q What name -- alphabetically what name were you looking for?

A Firouzan.

Q And why were you looking for the name Firouzan?

A The three transactions enumerated in the search warrant, Mr. Firouzan was the borrower on all three of those transaction.

Q So according to Mr. Hughes' instruction, the files should beunder the name Firouzan?

A Right.

Q Please examine Exhibit 5M.

Is Exhibit tM the first Firouzan file that you observed?

A Yes, it is.

Q From looking at the outside of the file folder as you saw it, the tab, what did you think that it was?

A I believe that it was a -- a loan file pertaining to Rostam Firouzan.

Q Once you determined -- believed that it was a loan file pertaining to Rostam Firouzan, did you conclude that there was reasonable cause to believe that it would contain evidence tending to show the crimes that had been outlined in the search warrant?

A Yes.

MR. GIVSON: Objection. Move to strike the answer. No foundation for that opinion.

As an offer of proof, your Honor, this file deals with a completely

different transaction than those that were enumerated in the search warrant.

MR. MEYERS: I believe Mr. Gilliam is capable of explaining the basis of his opinion.

THE COURT: The objection's overruled.

You may answer the question.

MR. MEYERS: The answer was already in.

THE COURT: The motion to strike is denied.

Would you read the last question and answer for the Court's benefit, please?

(Record read.)

BY MR. MEYERS:

Q Now, why did you belive that the documents in tM would constitute evidence relating to the crimes under investigation and outlined in the search warrant?

A First of all, I thought it may contains ome of the specific documents enumerated in the search warrant because

most of the documents pertained to Rostam Firouzan.

Second of all, if this was -- I already had knowledge that Rostam Firouzan was involved in what I believe were three strawbuy transactions and I thought possibly this might include another strawbuy transaction that I was not aware of. And if it was not a strawbuy transaction, I believe it may contain a legitimate loan which would contain some legitimate financial information on Rostam Firouzan.

Q Okay. Did you -- as outlined in the search warrant, did you understand that Mr. Firouzan had submitted false income information with respect to other loan applications?

A I was aware that the other applications contained false information on Mr. Firouzan, yes.

Q So if this 5M were --

MR. GIBSON: Your Honor, just -- I am going to object for a moment here, move to strike the last answer it it's offered for the truth of the matter stated because it's hearsay. If it's just offered and being received by the Court as evidence of this witness' state of mind and the reason that he did these things, that's fine. But he hasn't made a statement that otherwise would be hearsay.

THE COURT: Mr. Gibson, hearsay is admissible at this proceeding, so your objection's overruled.

MR. GIBSON: I am sorry, your Honor.

Hearsay is admissible under 1538.5 or the preliminary hearing in general?

THE COURT: The 1538.5.

MR. GIBSON: Then the Court --

THE COUR: I am receiving it for that purpose.

MR. GIBSON: And that purpose only, your Honor?

THE COURT: Yes. Wherever -- wherever you want to make a record -- as I have indicated, I am hearing the evidence on both the 1538.5 and the preliminary examination. The hearsay is admissible on the 1538.5 motion, but it would ...

(pp. 149 - 151)

MR. FOLIN: Your Honor, I'd make the same objection as to hearsay only to preserve the record.

MR. BIGSON: I would, too, your Honor. I hate to keep interrupting, but again, on this line of testimony maybe we can have a stipulation that --

THE COURT: I will receive this line of questioning, again, solely on the 1538.5 motion and not on the preliminary examination.

Go ahead, Mr. Meyers.

BY MR. MEYERS:

Q After determining that this loan file contained -- well, did you come to any conclusion about the nature of this loan file?

A Well, reviewing all the documents, it appeared that all the documents pertained to -- to a loan application for the property on Cochran in Simi Valley and that I believed that based on the -- on the employment information and salary figures, that this could possibly be another straw-buy transaction.

Q And what did you do with 5M at that point?

A I advised Mr. Hughes that I believed that this represented another straw-buy transaction involving Rostam Firouzan and was additional evidence of the crime under investigation, and as such I was seizing the entire file. I informed him that,

you know, this item was not listed in the search warrant, but that based on my review and my knowledge of the case that I believed that it was additional evidence.

Q Please examine Exhibit 1M.

(p. 154)

...search warrant, what did you do with respect to those files?

A I gave them back to Mr. Hughes.

Q Q After you looked at the two files that you have outlined, what happened then?

A We then returned to the Mill Creek office.

Q Okay. Now, when you had left the Mill Creek office with Mr. Hughes, were district attorney investigators still in Mr. Potter's office where Mr. Bucher had led them?

A I believe they were in Mr. Potter's office and on the third floor, yes.

Q Okay. And when you left that location had you given those investigators instructions as to what to do?

A Yes.

Q and what had you advised them?

A At that point we had been unable to locate any of the files enumerated in search warrant, so they were continuing to search the third floor for the items enumerated in the search warrant.

Q Okay. and had you previously given them instructions as to how that search was to be donducted?

A Yes. Each one of them had a copy of the search warrant and they were to search for the items enumerated in the search warrant.

Q If they discovered an item they believed enumerated in the search warrant, what were they to do?

A They were instructed to just leave it where it was at and when I returned they would point it out to me and I would review it to make sure it did -- it was covered by the search warrant and I would be the seizing officer of all evidence.

Q When you returned to the Mill Creek office did an investigat -- well, strike that.

Please examine Exhibit 2M-2.

What is 2M-2?

A The tab on the folder indicated the address of 2323 Mulholland, Calabasas.

Q Okay. And is that one of the addresses of the property for the transactions listed specifically in the search warrant?

A Yes, it is.

Q When you arrived back at the Mill Creek office did an investigator ask you to examine that file?

A Yes, he did.

Q By looking at the outside of the file tab that you have described, did you believe that the file related to evidence specifically listed in the search warrant?

A Because of the address, yes.

Q Did you examine the content of the file?

A Yes, I did.

Q And after examining the contents of the file did you believe that 2M-2 and its contents constituted evidence relating to intending to show that a crime outlined in the search warrant had occurred?

A Yes, I did.

Q Why?

A Reviewing all the documents, it contained some...

(pp. 163 - 164)

A Yes, I have.

Q When you first looked at the -- what was on the label on the outside of the file?

A The words "My House (Bob)."

Q From that label could you determine what the contents of that file was?

A No, I could not.

Q Did you then examine the contents of that file?

A Yes, I did.

Q In looking at the contents of the file, did you conclude that that file also contained evidence relating to the crimes outlined in the search warrant?

A Yes, I did.

Q What did you observe in the file that made you reach that conclusion?

A The documents in the file indicated that the property had been transferred from Intracoastal Realty Investment

to Tisa Riley. and I was familiar from the interview that Mr. Harbison had with Mr. Firouzan, that Tisa Riley was a business associate, a partner with him in the company called Boulevard, Inc..

Based on the fact that Mr. Firouzan had indicated that Boulevard, Inc. had very little -- had no income in 1981 and very little thereafter, and was not in existence in 1985, I found documents in here indicating that -- that Tisa Riley was -- I found verifications of employment that she was employed -- that she was employed by Boulevard, Inc. in 1983 and had a substantial income that I...

(p. 166)

...grounds.

BY MR. MEYERS:

Q Okay. Did you discuss with Tisa Riley the validity of the verifications of deposits in the Verded Oaks transaction?

A The verification of deposits?

Q Or pardon me. Verifications of employment?

Q Yes.

Q Did you discuss with her the income information provided the lender in the Verde Oaks transaction?

A Yes.

Q Did you discuss the same with Miss Riley with respect to the Deepwood Drive transaction and the transaction involving property on Mulholland Drive?

A Yes.

Q. Did she verify your previous information that the income information reflected in the loan files as to Boulevard, Inc. was inaccurate and fraudulent?

MR. GIBSON: Objection. Assumes a fact not in evidence, compound and complex.

THE COURT: Overruled.

You may answer the question.

THE WITNESS: When I showed her the verification of employment and the other documents indicating a salary figure for Boulevard, Inc., she began to laugh and said they were nowheres close to the income that Boulevard, Inc. had received.

MR. GIBSON: Your Honor, I'd again move to strike the...

(p. 184)

...Ventura County on Mr. Firouzan and there was notation in the file that Mr. Firouzan was the owner of record for some property on Cochran Street, Simi Valley.

Q Okay. From that information did -- do you believe that you could, by examining the records in the County Recorder's Office, determine who the lender was --

A Yes.

Q -- on that transaction?

A Yes, I could.

Q And did you believe that -- do you believe that you could, via either consent, a search warrant or a subpoena, obtain the lender's file for the Cochran Street transaction?

MR. GIBSON: Objection. It's irrelevant and immaterial as to whether he thinks now that he could have done so. The salient matter would be whether at the time there was any intent to do that.

THE COURT: The objection's overruled.

You may answer the question.

THE WITNESS: I believe I could with proper probable cause.

BY MR. MEYERS:

Q Now, when you talked to Tisa Riley on August 1st, did she discuss the Cochran Street transaction with you?

A Yes, she did.

Q And did she indicate to you that she intended to retain ownership of

that property even though it was sold to Rostam Firouzan?

(p. 190)

Q How many people accompanied you up to the third floor to execute the warrant?

A There was at least six individuals initially.

Q Anybody in uniform?

A Yes.

Q Do you recall how many people were in uniform?

A At least one, possibly two.

Q And this would have been a deputy sheriff with Orange County?

A Yes.

Q At approximately what time did you have contact with Steve Hughes after your arriving on the premises?

A At 9:23.

Q Where did you first have contact with Steve Hughes?

A I was located in Mr. Walters' office and he came in the office.

Q Who was in Mr. Walters' office at the time Mr. Hughes came into the office?

A Myself, Mr. Meyers and I believe Tom Garner.

Q I take it there was a conversation between you and Mr. Hughes as to what you were doing on the premises at that time --

A Yes.

Q -- is that correct?

What was the conversation, if you can paraphrase it?

A I was repeating what I had already previously stated to Mr. Walters, that identified that we were with the Ventura County District Attorney's Office and there was also members of the Orange County Sheriff's Department on the premises to execute a search warrant. I advised

Mr. Hughes that we have given a copy of the search warrant to Mr. Walters.

Q Did Mr. Walters give a copy of the warrant to Mr. Hughes, if you recall?

A I believe he did at that time.

Q Do you recall if Mr. Hughes reviewed the search warrant after it was handed to him?

A I believe he looked at it, yes.

Q Did you describe to him what the search warrant contained?

A Yes. I informed him that it pertained to files pertaining to Intracoastal Realty and Investment, Nationwide Home Loans and Americal Mortgate. It pertained to three transactions in which Rostam Firouzan was the borrower.

Q Did Mr. Hughes ask you any questions concerning that?

A Not that I can recall.

Q How long were you in Mr. Walters' office at this time with Mr. Hughes before you left the office?

By office I mean Mr. Walters' office.

A I would estimate five to 10 minutes.

Q Where did you then go after you left Mr. Walters' office?

A Mr. Hughes escorted us to the file cabinet in the hallway outside of Mr. Walters' office where he attempted to look for the files listed in the search warrant.

Q And did you go through the file cabinets?

A No. Mr. Hughes did. I was present.

Q Who was present with yourself and Mr. Hughes as he was going through the file cabinets on this occasion?

A I believe Mr. Meyers was with me and Mr. Garner possibly.

Q About how long did it take for Mr. Hughes to go through the file cabinet at this location?

A Approximately five minutes.

Q Was there any conversation between Mr. Hughes and yourself at this time?

A Either in Mr. Walters' office or at the file cabinet while he was looking for the items he indicated that their policy was to retain the files at the main office for only six months and they were then put in a mini-warehouse and possibly these files would not be on the premises.

Q After the first file cabinet, after about five minutes and none of the files were found, where did you then go?

A Mr. Hughes indicated they had another file cabinet in another portion of the building and he escorted us over there.

Q Did you go directly to the other file cabinet or did you stop to search any other locations between the first file cabinet and the second file cabinet?

A I believe we went directly to that file cabinet.

(pp. 207 - 209)

...our efforts were to give Mr. Hughes the opportunity to assist us in locating those documents to avoid a detailed search of the premises. Absent that, investigators were prepared to search for those items.

Q When you met with Mr. Walters in his office and later Mr. Hughes came into the office, were the investigators from your office going through files, looking for files at that time?

A I don't know. They may have been.

Q If they were, had you instructed them to do that?

A I had instructed them that I was going to attempt to obtain cooperation from the people on the premises in locating those files which would shorten our search.

Q When you went to the second file cabinet, do you know if any of the investigators from the office were going through other areas in the office looking for files of the material described in the search warrant?

A They may have been.

Q Would they have done that with your direction?

A We were on the premises to execute the search warrant.

Q I understand that. But when you get on the premises, did each investigator, to execute the warrant, go wherever he wanted to look on the ghird floor for the documents described in the warrant or would you have assigned them to a particular area

to examine?

A Most of the investigators from the office were...

(p. 212)

A I believe the topic of conversation involved directions of how to get to the public storage facility.

Q That would have been the only conversation?

A I believe so.

Q Do you recall if -- other than Mr. Hughes giving directions as to how to get to the off-site storage area, did anybody else in the vehicle have any type of a conversation?

A Not that I recall

Q How long were you at the off-site storage area before you left.

THE COURT: Before we get into that area, I think it's time for our noon recess. We will be in recess until 1:30 this

afternoon.

(Lunch recess.)

(p. 222)

...other documents or files listed in the search warrant?

A Yes.

Q Do you recall who informed you of that?

A No, I don't.

Q And do you recall which files you were advised that they had -- of documents that you were advised that had been found that were listed in the search warrant?

A First file I was directed to was the file pertaining to Mulholland which was located on the credenza at Bob Potter's office.

Q And did you review that file?

A Yes.

Q After that -- after reviewing the file, did you then believe that there

-- it was unlikely that you would be able to find any other documents at that time listed in the search warrant at the office?

MR. MEYERS: Objection, your Honor. The question's vague and ambiguous or I misheard the question. One or the other.

THE COURT: The objection's overruled.

You may answer the question.

THE WITNESS: I don't know if it was unlikely we were located. The premise I was operating under was that Mr. Hughes had made every effort he could to locate the file and could not and believed that possibly it was at his attorney's office, although he was attempting to make telephone contact with his attorney to verify that. I was operating under the premise that we still had the search warrant to execute and...

(p. 237)

Q Yes.

A. No.

Q Did the person tell you then that they had reviewed the file?

They had opened it up and gone through the contents of the file?

A What I recall him telling me was that it pertained to Bob Potter and Tisa Riley and I should review it.

Q Did you ask him any questions as to why you should review it?

A. No.

Q Did this individual tell you anything in particular that you should be looking for as you reviewed the file?

A No.

Q In the file itself, did you find any contents that were specified in the search warrant?

A No.

Q Was there anything dealing with Rostam Firouzan in that file?

A His name appeared in the file.

Q Do you know where it -- what document did it appear in?

A I believe it was on the verification of employment for Tisa Riley.

Q And in what context did it appear?

A (one line unreadable) verifying that she was an employee of Boulevard, Inc. and verifying her salary.

Q Did it list what his office was with Boulevard, Inc.?

A If I could look at the document I could answer the question --

Q Yes.

A -- more intelligently.

Yeah. Included in the file was a verification of employment that was signed at the bottom by Rostam Firouzan

titled president, dated February 10th, 1983.

Q By reviewing that file, did it help to lead you to other documents that were specified in the search warrant?

A Again, reviewing the file, I -- I found that there were income tax forms and W-2's verifying the salary for Tisa Riley for Boulevard, Inc..

Q Were those specified in the search warrant?

A No.

Q Did you hear any conversation concerning my file, one that you found -- excuse me.

"My house" in paranthesis "Bob" from any of the investigators and not just limiting yourself to the person that had you look at the file?

A I believe one of the searching investigators indicated to me that the file involved Bob Potter's personal residence

or may involve his personal residence.

(ln. 1, p. 239 - ln. 26, p. 240)

A I -- I may have.

Q You do not have an independent recollection, though, whether or not you did?

A No.

Q Do you recall if anybody else who assisted you in the search asked Mr. Hughes questions concerning these entities?

A Not that I am aware of.

Q Was the first time you had a conversation with Tisa Riley prior to August 1st?

A No.

Q. The first time you spoke to her was on August 1st?

A Yes.

Q 1985?

A Firht.

Q Did anybody from -- prior to August 1st, 1985 had anybody from the

District attorney's Office contacted Tisa Riley in regards to the Firouzan transactions?

A No.

Q Had anybody from the office had any kind of communication with Tisa Riley?

A No.

How did you come about Tisa Riley's name?

A Her name?

Q Yes.

A From Mr. Firouzan.

Q When did Mr. Firouzan give you Tisa's name?

(p. 243)

A. Yes.

Q Where did you contact your interview of Tisa Riley on August 1st of '85?

A It was located in her home on Venetia in Laguna Hills.

Q Who was present besides yourself and Miss Riley?

A Investigator Joe Pulido from the Ventura County District Attorney's Office.

Q Did she have any family members or friends present as well?

A There were individuals present in the home. She operates a -- a resthome for the elderly and there were several of her clients located in the house when we conducted the interview.

Q Dia any of them come into the area where the conversation was taking place?

A Very briefly.

Q Prior to discovering at Mr. Hughes and Mr. Potter's office the "my house" file, you had no idea that Tisa Riley was in any way related to that file; is that correct?

A That's correct.

Q When you interviewed Tisa on August 1st, did she indicate to you that she was having a difficult time remembering the various transactions concerning herself and Mr. Potter and Mr. Hughes?

A Due to the length of time, yes.

(lns. 1-27, p. 245)

Q Do you feel you also had probable cause to obtain an arrest warrant for those individuals?

MR. MEYERS: Objection. Relevance.

THE COURT: What is the relevance, Mr. Gibson?

MR. GIBSON: Your HOnor, I think that if there was probable cause to obtain an arrest warrant, that there may be possibly should have been some Miranda admonitions in this case.

THE COURT: I don't follow that. The objection's overruled.

BY MR. GIBSON:

Q Did you ever advise Mr. Hughes that he had the right --

THE COURT: I should have said the objection's sustained. I think you will -- go ahead.

MR. MEYERS: I think everybody understood.

THE COURT: I think so.

BY MR. GIBSON:

Q Did you ever advise Mr. Hughes before talking to him that he was the focus of an investigation in connection with criminal activity?

A No.

Q Did you ever advise him anything to that effect?

A No.

Q Did you ever make any indication to him that either he or Mr. Potter were suspects in connection with a criminal

investigation?

A No.

(p. 262)

MR. GIBSON: May I approach the witness, your Honor?

THE COURT: Yes.

BY MR. GIBSON:

Q May I take a look at that?

Now, when Mr. Hughes arrived on the premises, from that time until when you left to go to the storage locker, was he free to go at any time that he wished?

A Yes.

Q You would have allowed him to leave the location; is that correct?

A Yes.

Q In connection with the Cochran file that you seized, you say you had some indication before July 31st that there was a transaction involving one of the parties involved in this case with the property on

Cochran; is that correct?

A Yes.

Q And what information did you have before going there?

A Mr. Harbison, who had begun the investigation, had done a title search in Ventura County under the name of Mr. Firouzan and there was either a copy of some title documents or his note -- I believe it was just his rough notes indicating that Mr. Firouzan owned -- owned or had owned some property on Cochran.

Q But to the best of your knowledge had Mr. Firouzan indicated to Mr. Harbison or to anyone else connected with the District Attorney's Office thate he was involved in any way with the property on Cochran?

A Not prior to the execution of the search warrant, no.

Q And also Tisa Riley had not indicated to you anything in connection with the Cochran address before the execution of the search warrant; is that correct?

A No.

Q The only thing you knew was that apparently there was a note in your file from Mr. Harbison that Mr. Firouzan showed up on a title for the property; is that correct?

A That's all the information I had on Cochran, yes.

Q You didn't know at that time that it was a strawbuyer transaction, did you?

A No.

Q You didn't know whether there was any false information used in connection with that property, did you?

A No.

Q You certainly didn't think that Cochran -- that the Cochran Street address in any way involved the Verde Oaks Transaction, did you?

You didn't have any reason to believe that, did you?

A That they were interrelated somehow?

Q Yes.

A No.

Q You didn't have any reason to believe that it was interrelated to the Deepwood transaction, did you?

A No.

Q You didn't have any reason to believe that it was interrelated with the Mulholland transaction, did you?

A No.

Q And when you got that file you thought that it could e a legitimate loan transaction, did you not?

A Possibly.

Q And you thought that -- strike that.

Did that file, the Cochran file, have a number on it?

A I believe it did.

Q Was that number covered by the search warrant for that file?

A No.

Q Now, you mentioned that you felt that Mr. Hughes was cooperative in attempting to locate these files; is that correct?

A Yes.

Q When you came back from storage and he indicated -- he had indicated to you that he believed the Deepwood file was in the office of his attorney, did you have any reason to doubt him?

A I do not -- I do not believe he indicated to me -- they had not confirmed

it, I don't think, that the file was there.

Q But he had helped you find the other files you were looking for --

A Yes.

(pp. 265 - 267)

...writing it down to gain a property address. I was writing it down merely to identify the file that I had looked at.

Q But you did eventually use that address, did you not?

A I did not --

Q In connection with certain overt acts that are alleged in this case?

A Not as a result of observing those files.

Q No?

A No.

Q When you returned someone pointed out to you a file in Mr. Potter's office that said "my house" on it; correct?

A Yes.

Q Did anyone connected with the search team tell you that the documents they had found in that were covered by the search warrant?

A The statement to me, as I recall, was you need to look at that file because it contains some documents you would be interested in.

Q You would be interested in?

A Something to that effect.

Q The statement was not anything in connection with the documents in the search warrant?

A Again, my instructions to a member of the search team was not to seize any documents. Any documents that they located they felt were covered by the warrants, they were to leave in place and to notify me, that I would come and look

...recall his name.

Q Now, in connection with your conversation August 1, 1985 with Tisa Riley, did you have an appointment to go down and see her?

A No.

Q You just stopped in to see her; is that correct?

A Yes.

Q And she agreed to talk to you?

A Yes.

Q Did you advise her that she was a potential participant in criminal activity?

A Yes.

Q Before going down there did you have any knowledge or indication other than from what you had seized the day before that she had anything to do with the Cochran property?

A I don't believe so.

Q And you saw her name on the documents that you seized the day before in connection with the Cochran property; correct?

A Yes.

Q And, as a matter of fact, you shoeed her those documents that you had seized the day before in connection with the Cochran property --

A Yes.

Q -- didn't you?

A Yes.

Q and you went over those documents with her?

A Yes.

W Those would be the verifications of earnings, verifications of deposits and the loan applications, those type of documents.

A Yes

Q And you didn't have any knowledge of those documents before July 31st

when you seized them from the --either the storage locker or the MIll Creed address, did you?

A No.

Q Had you planned to do any further title searches of the Cochran Boulevard property?

A At this stage of the investigation we had an enormous amount of information with an enormous amount of leads and --

Q You hadn't done any title searches with --

THE COURT: Had you finished your answer yet?

Had you finished your answer to the last question?

A No.

THE COURT: You may finish your answer, then.

BY MR. GIBSON:

Q I'm sorry. I didn't mean to cut you off. I thought you were finished.

A We had an an enormous amount of information and at that time I had no immediate plans to follow up on it but eventually we would have, yes.

Q No immediate plans; is that correct?

A Right.

(pp. 274 - 275)

STEVE HUGHES,

a Defendant herein, called as witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GIBSON:

Q Mr. Hughes, I'd like to address your attention to July 31st, 1985.

What time did you arrive at work that morning?

A Approximately 9:30.

Q And when you arrived at work did you find anything unusual there?

A Yes. I was greeted on the third floor by police officers or shieffs, I guess it was.

Q Were they in uniform?

A Yes, they were.

Q What did they ask you?

A They asked me my name and they escorted me off the elevator.

Q Escorted you in what manner?

A Well, kind of by the arm, I guess, and led me into the reception area.

Q What happened there?

A I believe Vinse gilliam came up to meet me, I...

(lns. 3-28, p. 297)

A Yes.

Q Okay, what were the officers doing?

A I did observe them searching certain people coming up the stairs. Or up the elevator actually.

Q Were they letting customers in?

A No. Not customers.

Q What about individuals who wanted to leave?

Did you observe the officers in connection with them?

A Yes, I did.

Q And what were they doing?

A They were searching them upon leaving. They would be searched, brief-cases and such.

Q Now, what type of an effect did you feel that this had upon your business?

A Completely stopped our business that day.

Q Did you observe officers looking through files within say the first five minutes that you had arrived there?

A Um, probably within the first five or 10 minutes I would think.

Q When you arrived there you were escorted then into Mr. Walters' office?

A Yes. I believe by Mr. Gilliam. I met him at the reception door leading into the hallway and he introduced himself and then we walked down to Steve Walters' office.

Q Who was in Mr. Walters' office?

A I believe Mr. Meyers, Steve Walters, myself and then Mr. Gilliam also.

(p. 300)

Q What was he doing?

A He was going through the checks. The box of checks.

Q The box of checks that you had pointed out to him?

A Yes.

Q What did Mr. Meyers say to you?

A Shall I sit back down?

Q Certainly.

A Okay. He told me that the investigation didn't involve myself or my companies. He also said that, you know, they were seeking our cooperation 100 percent. If we didn't cooperate they could make life miserable for us for the next 24 hours.

Q Was anyone else within earshot at that time?

A No.

Q How far away were you from Mr. Gilliam who is seated behind the disk examining checks?

A I would say it's 25 feet.

Q About as far as the two us are from each other, would you say?

A Possibly a little farther.

Q A little farther than that?

Were the other members of the search team in the office at that time?

A Yes, there was.

Q What were they doing?

A There was on plain clothes officer I think behind the desk looking at some stuff in the credenza.

Q Well, what did you take Mr. Meyers' comments to mean in connection with who they were investigating as to these particular crimes?

A Well, I thought that they were investigating Firouzan and basically not myself or my companies. And that was all I was concerned about anyway.

Q What was that?

A That they weren't investigating myself or my companies.

Q And were you led to believe that they were not investigating you or your companies?

A I was told that.

Q What about Mr. Potter?

A Well, I took myself and my companies to include Mr. Potter.

Q Following that did you then agree to take them to the storage facility in order to assist them in finding files?

A Yes, I did.

Q And was your agreement to do so based in any way upon your understanding that the investigation was not of you or any of your related companies?

A Correct.

Q Had you known that in fact you and Mr. Poteer were the prime suspects in the investigation and that Mr. Firouzan was

cooperating with them, would you have agreed to have done that?

A I never would have.

Q At any time did they advise you that you had the right to remain silent and that you did not have to answer the questions?

A No, they didn't.

Q Had you known that you were the target of the investigation, would you have agreed to cooperate with them in connection with the search?

A No, I wouldn't have.

Q Had you known that you were the target of the investigation, would you have agreed to talk with the police in any manner?

A No, I would not have.

Q Did you ever advise them that they could take any documents other than the documents that were specifically listed in the search warrant?

A No,

Q When you went to the storage facility, did you make any suggestions on how you should get there?

A Yes, I did.

Q What did you say?

A As far as the driving over?

Q Yes.

A Oh. We went down the elevator and I started to get my keys out of my pocket and started to walk toward my car. And Mr. Gilliam said that he would much rather have me ride with them.

Q What did you take that to mean?

A Well, that I was ordered by an officer to ride with them, that I had no choice in the matter.

Q Were you told where to sit in the police vehicle?

A I --

MR. MEYERS: Objection. That assumes a fact not in evidence.

THE COURT: Objection's sustained.

BY MR. GIBSON:

Q What type of vehicle was it that you rode to the storage locker in?

Q It's a blue county vehicle. I think it was a Ford.

Q Were you told where to sit in it?

A I believe I was.

Q Where were you seated, do you believe?

Q I believe I was in the back seat.

Q Do you feel that you had any choice in taking that car versus taking your own?

A I felt I had no choice.

Q What happened when you got to the storage area?

A Upon arriving at the storage area I believe I gave Mr. Gilliam the code to punch in for the gate. He got out,

punched the code in, which allowed the vehicle to enter the storage facility. And we drove around to the actual storage unit. I got --

A What happened then?

A I got the key out, I opened the padlock, I believe I rolled the door open for the unit.

Q Did you and the officers then go in?

A Yes, we did.

Q What happened then?

A They observed the boxes laying all around and I believe they asked my assistance as far as how the loan files might be found in the boxes.

Q What did you tell them?

A I told them they were alphabetical and also by year.

Q Did they ask you if the files could be anyplace else?

A At that time, no.

Q Did a later conversation concern whether files could be mis-filed take place?

A I believe there was a conversation like that.

Q Could you relate that to us, please?

A I think they asked me if it's a possibility that they were mis-filed and I go anything's possible.

Q How were the boxes then searched?

A I think they searched most of the boxes. They searched them -- the alphabetical ones first and the F for Firouzan and then I think they just took -- you know, checked several boxes just as random.

Q Did you give them permission to take any files or to look in any files that were not covered by the search warrant?

A No, I didn't.

Q But what did they do?

A They basically looked at anything they wanted to.

Q Did they ask you permission to do this?

A No.

Q Did you feel that you had the right at that point to tell them no?

A No, I didn't feel I did.

Q What happened then?

A I think that they found most of the files that they were looking for, other than the one on Deepwood, and I pulled out a couple of files that I wanted to take back to the office with me.

Q Did any of them ask to look at that file -- those two files?

A Yes. Vinse Gilliam wanted to look at those two files.

Q And did he do so?

A Yes, he did.

Q Did you give him permission to check those files?

A No, I didn't.

Q Did you prepare a declaration in connection with the action to suppress, Mr. Hughes?

A Yes, I did.

Q And in that declaration did you indicate that law enforcement personnel assured you that you were not the target of their search, that they were only interested in investigating and securing evidence against Rostam Firouzan?

A Correct.

Q Who was the law enforcement person who told you that?

A Mr. Meyers did.

Q Was the disruption of your business also a concern when you agreed to take them to the storage locker?

A It was a major concern.

Q How was that?

A It was completel disrupting and our business and we just wanted to get them out as fast as possible.

Q If you didn't cooperate, how long did you understand they would stay and remain?

A It was my understanding that the search warrant was good for 24 hours and that they could make life miserable for us for the next 24 hours. That was the exact quote.

Q That was from Mr. Meyers also?

A Correct.

Q What about did you have any consideration for the effect that this might have upon the reputation of your business?

A Yes, I did.

Q What was your concern with that?

A I was very concerned that, you know, word would leak out that we were being investigated by the district attorney and would basically really affect our business.

Q And did that have anything to do with your agreeing to take them to storage?

A Yes, it did.

Q What about the number of personnel -- law enforcement personnel who were there?

Did that have any affect upon your decision?

A It was very intimidating. It was almost like a Gestapo type tactic I thought.

Q Do you believe that you had the right to refuse your consent to accompany them to the mini-storehouse -- mini-warehouse?

A No, I didn't.

Q Well, they were looking through files were the investigators also writing down information at the mini-warehouse?

A I believe so, yes.

Q Did you ever give them permission to do that?

A No, I didn't.

Q Did you ever give them permission to review the file marked quote "My house (BOb)" end of quote?

A No, I didn't.

MR. GIBSON: I have nothing further.

THE COURT: Mr. Ammons?

MR. AMMONS: Nothing.

THE COURT: Mr. Folin?

MR. FOLIN: Yes.

CROSS-EXAMINATION

BY MR. Folin:

Q When you were in your office before you went to the mini-storage area,

could you describe whether or not there was any security surveillance of the bathrooms by the search warrant team?

A There was.

Q And was there anything unusual about this in your opinion?

A I didn't know what to expect on a search warrant anyway, but that did seem pretty unusual that they were searching people going in and out of the restroom.

Q Did anybody complain about that to you?

MR. MEYERS: Objection. Relevance.

THE COURT: Sustained.

MR. FOLIN: If I could be heard, your Honor.

THE COURT: I can see some relevance. I will reverse my ruling.

You may answer the question.

THE WITNESS: I don't know if I heard any specific complaint. I heard some comments

about it, though.

MR. FOLIN: No further question.

THE COURT: You may cross-examine, Mr. Meyers.

MR. GIBSON: Your Honor, I might indicate that I neglected to ask Mr. Hughes a number of questions I wish to...

(pp. 303-311)

...Not produce them that the officers would search the office at that time?

A Yes. That's correct.

Q And at that time didn't you tell Mr. Gilliam that you had not done anything wrong and that you would cooperate fully in locating those items listed in the search warrant?

A Not at that time I don't believe.

Q At what time did you make that statement, then?

A It was after I was told that the search involved three real estate transactions, Rostam Firouzan being the buyer. Nothing about Nationwide and our other companies.

Q Pardon?

A Nothing about our companies or myself.

Q Was that -- was that still at the point when you were in the office with Mr. Gilliam, Mr. Walters and myself?

A Yes.

Q And so then you did make the statement that you had not done anything wrong and you had fully -- and you would cooperate fully in locating the items listed in the search warrant?

A That's basic statement that I said.

Q Okay. Now, at that time nobody had told you that you were not a suspect;

isn't that correct?

A That's correct.

Q In fact, at that time you didn't ask anyone whether or not you or Mr. Potter were suspects in the investigation?

A I took -- I took the comment that the search involved three real estate transactions with Rostam Firouzan being they buyer as not to involve me.

Q But you didn't ask anyone whether or not you were a suspect?

A Correct.

Q And obviously you knw that you and the defendant Potter had actually been the loan brokers who had put together those transactions with respect to Firouzan?

A I didn't know that precisely. We do a lot of loans.

Q Well, isn't it true that you recruited Mr. Firouzan to act as a straw-buyer in the real estate transaction that

were listed in the search warrant?

MR. GIBSON: Objection. Outside the scope.

MR. MEYERS: I don't believe it is because it goes to this man's credibility as to whether he truthfully believed he was not a suspect.

MR. FOLIN: Your Honor, could the question be reread?

THE COURT: Would you read the question, please, for the benefit of counsel?

(Record read.)

MR. FOLIN: Your Honor, I will object on two grounds. The first would be assumes a fact not in evidence, and the second that it's argumentative.

MR. GIBSON: And also it's beyond the scope of the...

(pp. 317 - 318)

A I believe so.

Q And what happened then?

A We stopped right at the doorway.

Q Did you say anything?

A I believe that we started to talk.

Q Who started the conversation?

A I don't remember who started the conversation.

Q Do you recall what you said?

A I don't remember precisely what I said to you at that point.

Q In fact, you don't recall what I said to you, do you?

A Yes, I do.

Q What do you recall?

What do you recall?

A I recall you precisely telling me that this investigation didn't involve myself or my companies.

Q Do you recall us saying anything in response to that?

A I don't believe I said anything in response. I think there was a conversation about the storage unit. I think that's what we were talking about.

Q Okay. When you testified on direct examination, you indicated that the statement was to the effect that you were advised the investigation didn't involve you or your companies and that -- that if you didn't cooperate we could make life miserable fo you to 24 hours.

Was that said in one statement or now are you relating this in an entire conversation?

A There was another statement which --

Q At the same location and time?

A At the same location and time.

Q Well, yet you don't recall who initiated the conversation?

A I think that we were talking about the storage unit.

Q Okay. Well, the question is, you don't recall who initiated the conversation?

A I think that we were both talking back and forth about the storage unit.

Q What did you say?

A I think that you were soliciting my help in giving your people access to it and I think at that time is when you told me that the investigation did't involve myself or my companies.

Q Was -- and what -- what was your response to that?

A I don't think I said anything at that point.

Q What happened next?

A Okay. That was at the point that you said that if I didn't cooperate we could make life miserable for you to

the next 24 hours.

Q What did you say?

A I don't think I said anything at that point.

Q Well, now, had you -- you had previously mentioned to Mr. Gilliam that you thought maybe those files...

(pp. 329 - 330)

...that day.

Q More specifically, was there any conversation concerning whether or not you and Mr. Hughes were the focus of the investigation?

A Only in the context that Mr. Hughes had testified to earlier wherein he said that I was assured that we had no problems, quote-unquote, with the district attorney's office, that they were after Mr. Firouzan and I believe a Mr. Alan Glass, that they cooperated fully in that extent.

Q Did you subsequently come across the Deepwood file?

A Yes.

Q And where -- where did you first see the Deepwood file after you returned from your vacation?

A I don't believe it was that same day, but I'm not positive; but it was in within a day or two of my arrival or the day that I arrived. It was either found by one of our processors or myself. I'm -- I just can't recall. It was in Mark Knapp's office, I know that as a fact. It was either brought to me or else I found it on top of his desk.

MR. AMMONS: I would object as to where it was found as being a conclusion unless it is limited solely for the purposes of this hearing.

MR. FOLIN: I believe all of the testimony from our clients is --

THE COURT: The record will clearly reflect that it is received solely for the purposes of this hearing.

BY MR. FOLIN:

Q Did you have a conversation with Mr. Bowne after your arrival back from your vacation?

A Yes.

Q And when was the first time you spoke to Mr. Bowne?

A I can't be positive because he was on a vacation at the same time. He may have returned a couple of days after I had returned but it was within, let's say, a week, maybe three days, probably be a better guess, of my arrival back.

Q Did -- the conversation -- conversation have anything to do with the Deepwood file?

A Yes.

Q What was the conversation about concerning the Deepwood file?

MR. MEYERS: Objection; hearsay.

THE COURT: I will receive it for the same limited purpose.

MR. MEYERS: For essentially not the truth of the matter stated?

THE COURT: Yes, just on this issue of probable cause.

THE WITNESS: The conversation in context was that he did not have the file. He asked had we found the file. It was sort of an exploratory conversation in that area initially.

The conversation went on further into other areas regarding the search. Mr. Bowne said he had spoken with Mr. Meyers of the Ventura County District Attorney's Office, told Mr. Meyers that we were in full cooperation with them and trying to locate the file. Mr. Meyers at the time was

somewhat suspect of Mr. Bowne, saying, "How come the file isn't in your office? I find that very strange."

BY MR. FOLIN:

Q Mr. Potter, let me proceed by question-and-answer, then.

Did you and Mr. Bowne have a conversation concerning whether or not you were the -- you and Mr. Hughes were the focus of the investigation?

A Yes.

Q What was this conversation?

A That we were not.

Q After having this conversation with Mr. Bowne did you do anything with the Deepwood file?

A I don't think I had found it at that time or it had not been found at that time of that conversation. I think it was found shortly thereafter, either that day, that afternoon or the next day.

Q Okay. Eventually it came into your possession?

A Correct.

Q What did you do, then do with the file?

Q We sent it, I believe, by messenger to Mr. Bowne's office.

Q And did you authorize Mr. Bowne to do anything with the file?

A Yes.

Q Shat did you authorize Mr. Bowne to do?

A To release the file as he saw fit.

Q Why did you authorize him to do that?

A I felt no exposure jeopardy, et cetera, in that area.

Q If you had been advised that either yourself or Mr. Hughes were suspects of some type or criminal scheme would you

have authorized the release of the file by Mr. Bowne to the district attorney's office?

A Not without the advice of my counsel.

Q Did Mr. Bowne give you any advice in this situation as to whether or not you should release the file?

A Yes.

Q And what was that advice?

A to release the file.

Q All right.

MR. FOLIN: No further questions, your Honor.

THE COURT: Mr. -- any question, Mr. Gibson?

MR. GIBSON: Yes, your Honor.

DIRECT EXAMINATION

BY MR. GIBSON:

Q Well, did Mr. Bowne indicate to you when he gave you that advice that his advice was based upon the fact that

Mr. Meyers had indicated that you and Mr. Hughes were not suspects?

A He -- I think a better terminology was he assured us that there was no problem, quote-unquote, or words to that effect, for us as individuals or a company with the Ventura D.A.'s Office. He had been assured that by -- at that time by Mr. Meyers.

Q And by "problem," you understood that to mean that you were not going to be charged in connection with any crimes involving that file?

A That would be my understanding.

Q When he spoke to Mr. Hughes did he tell you that he had spoken to Mr. Meyers about who the suspects were in connection with their search?

A I might have a problem with the word "suspects."

It would be more what they were looking for, they were looking for three or four loan files involving Mr. Firouzan, I believe. I believe the name Alan Glass was also brought up at that time. Those are the only two names that I can recall.

Q Did Mr. Hughes indicate to you that the representations were to him that he and your business entities were not involved in the investigation?

A Absolutely correct.

Q When Mr. Bowne made the representation to you that you and Mr. Hughes were not, in effect, suspects die he indicate what he was basing that on?

A The conversation he previously had with Mr. Meyers.

Q Before you authorized Mr. Bowne to release that file, did you talk to Mr. Hughes about whether or not it should be done?

A I'm sure I did. I just don't recall the conversation verbatim.

Q And in the conversation do you believe that you related to Mr. Hughes the fact that Mr. Bowne had also represented to you as per his conversation with Mr. Meyers that you and Will Hughes were not, in effect, suspects?

A Words to that effect were related.

MR. GIBSON: I have nothing further, your Honor.

THE COURT: Mr. Ammons?

MR. AMMONS: No questions at this time, your Honor.

THE COURT: All right. you may cross-examine, Mr. Meyers.

CROSS-EXAMINATION

BY MR. MEYERS:

Q What was the date of your first conversation with Mr. Bowne?

A I'm not positive, it was shortly after his arrival back from vacation, also. It could have been the same day he arrived in his office. I' not positive.

Q During your -- during your first conversation had you located the file yet?

A No.

Q During your first conversation, in your first conversation, that was not the time that you have Mr. Bowne authorization to release the file then?

A Let me think about what was the context of our first conversation.

That was probably discussed in the first conversation but was not the point of the first conversation.

Q In fact --

A That is probably the best I can answer that.

Q In fact, in that first conversation with Mr. Bowne he did not advise you that he had been assured that you and Mr. Hughes were not suspects?

A I'm not sure whether in the first conversation he had spoken to you and I don't think he had in our -- we had two telephone conversations relating to this matter and I don't think it came up in the first one. I don't think he had spoken to you yet because as, I recall, I had made some comment to him that I wanted him to relate to you and so my mind would say then that he then called you, had your response, called me back, we had a second conversation. I believe that would be the scenario.

Q Okay. So what were the -- what were the things that you wished him to express to me?

MR. GIBSON: There would be an objection as to --

MR. FOLLIN: There would be objection to relevancy, your Honor, exceeds the scope of the direct.

MR. MEYERS: I think it goes to the witness' state of mind.

THE COURT: Would you read the question, please, pending question for the record. Please.

(The pending question was read.)

THE COURT: Objection overruled.

You may answer the question.

THE WITNESS: I wanted him to relate to you in the strongest terms that I wanted the return of every item taken that was not listed on the search warrant.

BY MR. MEYERS:

Q And is that all?

A To relate to you; correct.

Q How soon after your first conversation was it that you had the second conversation with Mr. Bowne?

A It would be when he called me back with your response; I assume your response.

Q Was that on the same day?

A I'm not positive.

Q Had you found the file by that -- by the time he called you back?

A Chronologically I can't be sure that at that point in time I had it in my possession.

Q Did you have the file during your first conversation with Mr. Bowne?

A I don't recall.

Q Pardon?

A I don't recall. I would say no, to the best of my memory. I would say it was as I testified to earlier, that would be the chronological order as I can recall.

Q Okay.

But it is possible that you had the file during your first conversation

with Mr. Bowne and advised him of such?

A No, no. I -- I don't think so because, as you...

(pp. 356 - 363)

...ever been in the office up there?

A No.

Q All right. In an effort to expedite securing the items that were listed in the search warran personally, I presume after you got upstairs and saw how big the area was you were anxious to have the cooperation of the people there and bring you the files, weren't you?

A It would be expeditious for everybody involved, yes.

Q And you were smart enough to realize that if an adversary position developed, in other words, if the people there got their backs up, that it would slow you down in finding the files; isn't that correct? That if they -- if you made

them made or told you to go to hell that it would slow things down, wasn't it?

A It is a correct statement, but it didn't matter to me whether they co-operated or not. If they didn't cooperate, we would proceed with a thorough search of the entire premises.

Q But you didn't come on heavy, did you?

A No.

Q And you were more or less trying to schmooze them into cooperating; weren't you?

MR. MEYRS: Objection, your Honor. I think the question is unintelligible.

THE COURT: The word schmooze is unintelligible to me.

BY MR. AMMONS:

Q "You are not in trouble. It is not you we are after, it is this damn Firouzan." Is that about what happened?

A That was never communicated to them by myself, no.

Q Was that the attitude? It would not have bothered you a bit if that attitude had been conveyed, would it?

MR. MEYERS: Objection.

THE COURT: Grounds?

MR. MEYERS: Relevance.

THE COURT: Overruled. you may answer the question.

THE WITNESS: My attitude was I was there to execute a search warrant. I wanted to do it in a professional, cooperative manner.

BY MR. AMMONS:

Q Well, when they said, as I think you have testified, "We are willing to cooperate. We have nothing to hide. We haven't done anything wrong," you didn't correct them, did you?

A I am not sure of your question. Correct them in what sense?

Q "Oh, yes, you have done something wrong. We think you are crooks and we are here to get evidence to prove it"?

A I said nothing to that statement, no.

Q They weren't furnished with a copy of the affidavit in support of the search warrant previous to giving you consent to look through the office and go over the...

(pp. 381 - 382)

APPENDIX K

FILED

SEP 25 1989

Richard D. Dean, County Clerk

By_____
Deputy County Clerk

MICHAEL A. CARTY
Attorney at Law
1215 De La Vina Street, Suite K
Santa Barbara, CA 93101

Attorney for Defendant POTTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. ROBERT POTTER and STEVEN HUGHES, Defendants.	CASE NO. CR 22549 NOTICE ON APPEAL

Defendant ROBERT O. POTTER, through his attorney, hereby appeals from the judgment of the above-entitled court rendered on August 9, 1989.

The following points are to be raised on appeal:

1. Denial of defendant's motion to dismiss pursuant to Penal Code s section 995;
2. Denial of defendant's motion to suppress evidence pursuant to Penal Code section 1538.5;
3. Denial of defendant's motion to recuse Deputy District Attorney Robert Meyers;
4. Error by the trial court in admitting evidence of uncharged crimes by the defendant and co-defendant;
5. Insufficient evidence to sustain convictions on counts 1, 2 and 3 and respective allegations of excessive taking pursuant to Penal Code section 12022.6.

....

Dated: (9-1-89

/s/
MICHAEL A. CARTY, ESQ.
Attorney for Robert O. Potter

K-180

APPENDIX L

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. STEVEN WILLIAM HUGHES and ROBERT OTTO POTTER, Defendants and Appellants.	No. B045315 (Super.Ct.No. CR 22549)

Court of Appeal
Second Dist.
FILED
JUL 22 1991
Robert N. Wilson
Clerk
F.G.Stapleton, Jr.
Deputy Clerk

APPEAL from judgments of the Superior Court of Ventura County, Kenneth R. Yegan, Judge. Affirmed.

Terrence L. Cannon for Defendant and Appellant Robert Otto Potter.

Daniel E. Lungren, Attorney General, Richard B. Iglehart, Chief Assistant Attorney General, William T. Harter, Supervising Deputy Attorney General, and Donald J. Oeser,

Deputy Attorney General, for Plaintiff and Respondent.

After a jury trial, defendants/appellants Steven William Hughes and Robert Otto Potter were convicted of conspiracy and grand theft as a result of certain "straw-buyer" transactions processed through their various real estate companies. They appeal from the judgment of conviction, asserting that they were denied their constitutional right to counsel at the hearing on their several motions; they were entitled to a de novo hearing in superior court on their motion to suppress; the search of their office and storage facility and seizue of certain documents was in violation of the Fourth Amendment; there was no evidence to support a conspiracy; there is a jurisdictional bar to prosecution of each of the overt acts in count I; and prosecution of count III was barred by the applicable

statute of limitations. For the reasons discussed below, we reject each of these contentions of error and affirm.

....

This argument fails because the evidence presented indicated that the draft could not be deposited until the escrow officer could record and get an authorization number. The escrow officer did not receive the approval number until August 18, 1983. The vice-president of Home Rediscounting Services testified that the draft was used precisely because it could not be honored until an authorization number was obtained.

Prosecution of count III was not barred by the statute of limitations.

DISPOSITION

The judgments are affirmed.

NOT TO BE PUBLISHED

GOERTZEN, J.

We concur:

GEORGE, ACTING P.J.

EPSTEIN, J.

APPENDIX M

SUPREME COURT
FILED

OCT 23 1991

Robert Wandruff Clerk
Deputy

Second Appellat District, Division Four,
No. 8045315 S022771

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

IN BANK

THE PEOPLE, Respondent

v.

STEVEN WILLIAM HUGHES Et Al., Appellants

Appellants' petition for review DENIED.
George, J. did not participate

LUCAS
Chief Justice